Our Second Decade

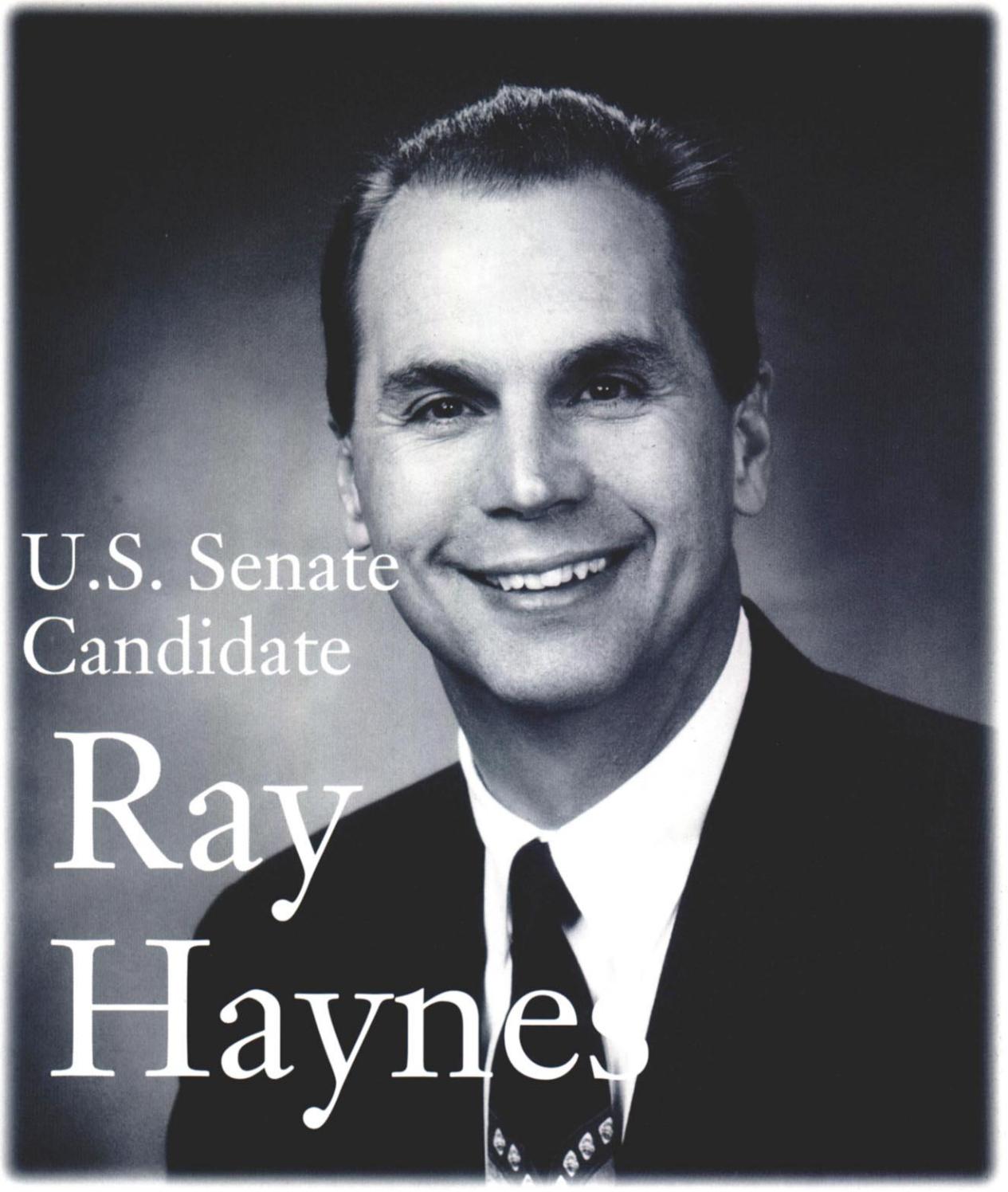
GOP Presidential Candidate Roundtable: Whither the Tax Issue?

CALIFORNIA★POLITICAL
REVIEW
JANUARY/FEBRUARY 2000 • VOLUME 11 • NUMBER 1 • $4.00

Recalling the *Real* Rose Bird
by Phillip E. Johnson

Myth: Fiscal Accountability at California's Public Schools
by Carl Brodt

1999 Congressional Triumphs
by Leon McKinney



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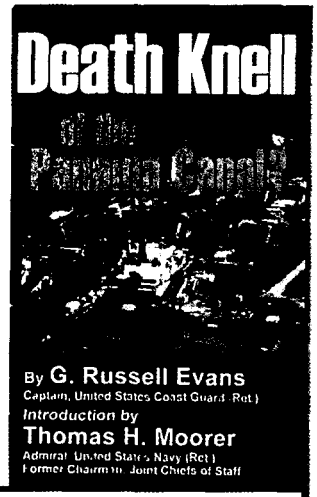
"...must reading... I am astounded when I hear supposedly intelligent officers and officials state that the Canal no longer has any strategic value."

Admiral Thomas Moorer, USN (Ret.)
former chairman,
Joint Chiefs of Staff, Honorary Chairman; Retired Military Officers Advisory Board of National Security Center

"...an invaluable reference to understanding the importance of the Canal..."

Senator Jesse Helms


Death Knell
of the Panama Canal?
By G. Russell Evans
Captain, United States Coast Guard (Ret.)
Introduction by
Thomas H. Moorer
Admiral, United States Navy (Ret.)
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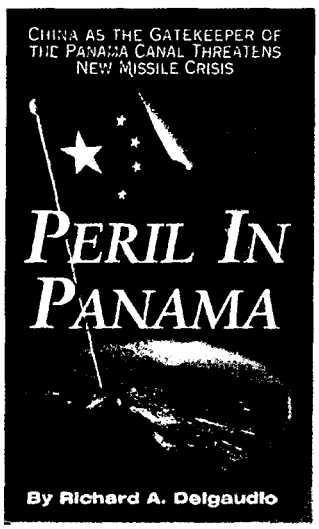

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A PUBLICATION OF THE
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CORRESPONDENCE

Sparks Fly

[David] Horowitz is right ("Truth & Politics," *CPR*, Sept./Oct.—Nov./Dec. 1999). If anyone has ever seen how Republican strategy is formulated at a local level through our state's local Republican County Central Committees, one would have no choice than to concur totally with Horowitz. Republicans don't have a clue that:

a) they are engaged in a life and death war with leftists,

b) they must immediately get to their battle stations with a winning strategy, and

c) they are bleeding badly.

Horowitz's "Art of Political War" is a refreshing piece on political strategy, the likes of which I haven't seen formulated in the Republican Party. In contrast, John Kurzweil indicates we should do battle simply with the truth. This holier than thou strategy of warfare is precisely why Republicans have lost California and now, with Democrat redistricting, that loss is to be permanently sealed. How do you spell n-a-i-v-e-t-e?

War and politics are local. Yet we have conceded the urban cities as an occupied territory not worth fighting for. California has gone Democrat. The questions we should ask and answer are: How does Clinton appeal to the public on Republican issues and get credit for them while Republicans get whipped? Why are our urban city councils and communities Democrat-controlled? What can be done about it? Horowitz offers the only plausible explanation. Kurzweil's alternative, attributing Republican losses to Republican leaders' "lack of backbone" sounds jingoistic, simplistic, naive, and most importantly, rings hollow.

Adam Sparks, Republican nominee
8th C.D., San Francisco

Mr. Kurzweil responds:

Mr. Sparks, like Mr. Horowitz, confuses the concepts "necessary" and "sufficient" and so repeats Mr. Horowitz' misstatement of my argument: that I "indicate" that Republicans "should do battle simply with the truth." I said repeatedly that truthfulness is *necessary* to Republican victory and, also quite explicitly, that it is *not* sufficient.

It is necessary for two broad reasons: first, because America's free way of life, which is the Republican cause, can be sustained only by a virtuous people, as the Founding Fathers and Ronald Reagan repeatedly pointed out, and virtuous people do not countenance lying. The left knows this. Seeking to erect a tyranny, it wisely works to undermine the peoples' moral fiber, ridiculing and attacking religion, the family, honesty, and institutions such as the rule of law, which is merely the rule of honesty applied to government. We must shore up the foundations they try to tear down if we hope to prevail.

The second reason that honesty — a refusal to countenance lying — is necessary to Republican victory is that no one will follow a moral teacher whose own behavior is shamelessly immoral, one who tells others to do the right thing even when it hurts, but excuses himself when it seems expedient to do so. The left knows this too, and works hard to dig up and trumpet to the world the flimsiest instances of Republican moral failure and "hypocricy." It is much easier to induce moral apathy by destroying people's faith in their moral leaders than by convincing them that lying, cheating, stealing — the basic socialist agenda — is good in itself. We do their work for them when we countenance lying openly. At the very least, Republicans who urge us to lie show no grasp of the war they are in.

Which brings us back to Mr. Sparks, who seems unable to see more than a suggested sales slogan in my saying we should insist on truth — my

(Please turn to page 7)

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SACRAMENTO SPECTATOR

The GOP's "moderates" are in full war paint as they attempt to wrest control of local county central committees from conservatives. A group of self-styled "performing arts Republicans" in Orange County has collected $500,000 for this cause and has recruited slates of candidates in counties around the state.

The main target of this group is the Orange County Central Committee. These moderates insist that changes have to be made, that the troglodyte conservatives are driving voters away in droves and costing elections. Hmm.

Conservative leaders in Orange County took control some 20 years ago of an organization in shambles. Orange County Democrats once had members of Congress, two state Senators, three Assemblymen, and a plurality of registered voters. GOP Chairman Tom Fuentes guided the Party to an apex of total hegemony in partisan elective offices. In 1996 there was not a single Democrat in Congress or the Legislature from the county.

There is now one Democrat each: in Congress, the Assembly, and the state Senate, and the blame for that lies squarely with Bob Dornan, not Tom Fuentes. The GOP has a registration margin of 235,000 over the Democrats.

This Central Committee is a model of efficiency and fair operation across the country, but that isn't good enough for our immoderate moderates. Using their own version of the thought police, the moderates want to purge any Republican — no matter how productive — who is prolife or believes in the Second Amendment. The Orange County moderates also have as an agenda item lowering the vote needed to pass bonds from 2/3rds to 50 percent. That's why the corporate socialists and sell-outs for the teachers unions are part of the cabal to oust the conservatives. Interestingly enough, these moderate donors have never made this kind of effort to help the Party or actually elect Republican nominees. Nosiree Bob. They venture from their insulated, isolated, wood-paneled suites only to purge politically incorrect Republicans.

Another item of offal to float to the surface is the statewide business community's support of the ballot measure that would reduce the vote needed to pass local school bonds. As the Howard Jarvis Taxpayers Association has pointed out, when school bonds go bad there is only one legal recourse — the local property tax. The Jarvis folks project this could double property taxes. Making it easier to pass these bonds not only trashes a 100-year-old constitutional protection for homeowners, but puts every private homeowner at risk in the next economic downturn.

For years, liberals have wanted to enact a "split roll" property tax, with homes taxed at a lower rate than businesses. Faithful conservatives have defended big business on the principled ground of opposing tax increases.

Now that the state business community has deserted this principle and the small taxpayer, why shouldn't small taxpayers or their Sacramento representatives cut the best possible deal with the Democrats on the split roll? The business community cares not about you, your family or your home. Why should you defend them?

— A. P. C.

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The Politics of Bad Faith

The state's 'consumer attorneys,' to make themselves even richer, want Californians to pay $300 per year more for auto insurance. In March, the voters will decide.

MARK S. PULLIAM

ROSE BIRD is dead. May she rest in peace. Her admirers — the *L.A. Times* chief among them, judging from its editorial encomium in her honor — wish for her memory to live on as a symbol of "courage," "principle," and, above all, "judicial independence." Her legacy persists in other, unexpected, ways, including two propositions that will appear on the March 7 ballot. Although not officially entitled as such, Propositions 30 and 31 could accurately be called the "Rose Bird Legacy Referenda," or perhaps "No on Rose Bird Redux." Those inclined toward nostalgia might view these propositions — sponsored by the Coalition Against Fraud and Higher Insurance Costs — as an opportunity to re-live that Grand Moment in 1986 when California voters displayed the fortitude to throw Rose Bird and two of her activist colleagues off the California Supreme Court.

If one were forced to select the worst ruling issued during her notorious tenure as chief justice, admittedly a difficult task given the pantheon of outrageous cases from which to choose, a leading candidate would be the opinion in *Royal Globe Insurance Company v. Superior Court,* a 4-3 decision issued in 1979. (Frank Richardson, joined by William Clark and Wiley Manuel, dissented.) In *Royal Globe,* the Bird Court invented a new type of lawsuit against insurance companies, for "bad faith" refusal to settle insurance claims as promptly or as generously as a jury, second-guessing the insurers' claims department, determined was appropriate.

Royal Globe fundamentally altered the legal obligations of insurance companies. In the liability insurance context, the insurer is contractually obligated to defend and to indemnify its insured against covered claims asserted by third parties against the insured. Such claims could consist of a "slip and fall" at an insured grocery store, a dog bite by a neighborhood pet, or injuries incurred in an auto accident. Prior to *Royal Globe,* the allegedly injured party (or "victim," in lawyerspeak) would make a claim to the insured's insurance company, which would be investigated and, depending on the circumstances, settled. An insurance claims adjuster would determine liability, evaluate damages, and in many cases propose a payment that the third party was free to accept or reject.

If the insurance company made no offer, or if the third party thought the insurer's offer were too low, the third party could sue the insured, which the insurer would be obligated to defend. The insurance policy was a contract between insurer and insured, and the insurer's legal obligations — arising from that contract — were to the insured only. Although not flawless, this time-tested model provided both insured and insurer reasonable protection against fraudulent or exaggerated claims. *Royal Globe* removed that protection, but that was not all.

LIKE MEDIEVAL alchemy, *Royal Globe* made two lawsuits out of one, turning routine personal injury claims into a goldmine for the plaintiffs' bar. Because the newly-minted "bad faith" lawsuit could be asserted by third parties directly against an insurance company if it did not promptly pay the amount of damages demanded, and because the "bad faith" lawsuit carried the potential for limitless amounts of "emotional distress" and punitive damages, insurers denied claims or negotiated settlements at their peril. The only "safe" course of action was to pay the entire amount demanded immediately. Accordingly, under *Royal Globe,* insurers were effectively compelled to pay claims where liability was questionable or where damages were exaggerated (through padded medical treatment by quack doctors for unprovable soft-tissue injuries such as "whiplash"), or both.

The result? A tidal wave of abusive "bad faith" lawsuits, a dramatic increase in the "frequency" and "sever-

Mark S. Pulliam, California Political Review's *legal issues correspondent, is an attorney in private practice in San Diego.*

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THE FRONT LINE

Election Day

Duane Dichiara

Even though Republican Elia Pirozzi lost to Democrat Joe Baca in California's 42nd Congressional District special election, Pirozzi's campaign bore valuable lessons for the GOP about the importance of a well-organized election day get-out-the-vote drill. Leading up to this special, Democrats held a 52-33 percent registration advantage in the 42nd, but in the November 16 run-off, Pirozzi garnered 44.8 percent of the vote. Neutral sources estimate the Pirozzi campaign's election day activity added five to seven points to his vote total. It also taught several new campaign workers and local GOP leaders statewide how to run effective precinct programs.

In the election's first round, Pirozzi's campaign repeated an error made often by campaigns and local Parties: get-out-the-vote effort were limited to the weekend before the election while election day was virtually ignored. Pirozzi's first-round vote total was dismal. This mistake was not repeated in the run-off. In November, GOP forces spent approximately $100,000, about 5 percent of the campaign budget, on election day get-out-the-vote. Beginning with almost no precinct infrastructure and little help from decaying Republican coalitions, they created a ground effort from scratch.

Duane Dichiara is campaign manager for Assemblyman Tom McClintock, a GOP candidate in California's 19th state Senate district.

From 13 weeks out, eight to nine paid ($800 to $1,000 per month) Grassroots Directors walked door-to-door identifying probable Pirozzi voters. GOTV Director Nathan Fletcher spoke to local high school Civics classes about campaigns. Instructors had agreed that students working in campaigns would receive extra credit, allowing Fletcher to sign up interested volunteers. By the final month, this generated about 100 students per evening for phone and mail programs. He added to this on election day, offering $50 to students, parents, and local college athletic teams that helped get-out-the-vote.

Also, approximately 50 legislative staff were present. They kept Pirozzi headquarters open, coordinated the efforts of the hundreds of precinct workers, and walked base GOP precincts. On election day the overall effort came together. More than one thousand workers were first trained and then 800 of them, four to a precinct, covered the district from 3 to 8 p.m. More than two hundred staffed phone banks. At least one bilingual GOP worker was present at each phone bank and in most precincts in this heavily Hispanic district.

Some county Republican Parties, such as Orange, and some candidates, such as Congressman Jim Rogan, regularly run excellent election day drills. But this is not always so, especially in regions without targeted races or developed Party structures. The many Republicans who live in Democrat-majority regions are vitally important voters in statewide elections. The San Francisco area, for instance, is home to more than 800,000 GOP voters. Also, in some GOP strongholds, local Parties and many elected officials do little on election day. This loses elections.

Diligent election day activities can add two to four points in most normal elections, and five to six points in many specials. Two to four additional GOP points per county would have dramatically improved Republican fortunes in 1998's state and local elections. They can do the same in 2000. CPR

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ity" of bodily injury claims alleged in routine auto collisions, and, ineluctably, a spiraling escalation of insurance premiums, especially for automobile and homeowners' coverage. Things became so bad that the incidence of such bodily injury claims in California (expressed as a ratio to property damage claims) was the highest in the nation — twice the national average. In Los Angeles — where, perhaps coincidentally, about half of California's lawyers practice — the incidence of such bodily injury claims approached *100 percent* of all property damage claims — *i.e.,* personal injury claims were made in nearly every parking lot fender bender.

THE PRINCIPAL beneficiaries of *Royal Globe,* besides the purported "victims" asserting marginal or inflated accident claims, were personal injury lawyers who extorted exorbitant settlements from insurers, often without even filing a lawsuit. In the halcyon *Royal Globe* days, winning a hefty contingency fee was like shooting fish in a barrel.

The farcical *Royal Globe* shakedown routine came to an abrupt end in 1988, following the purge of the Rose Bird regime. Deukmejian-appointed Chief Justice Malcolm Lucas wrote a decision overturning *Royal Globe.* In that decision, entitled *Moradi-Shalal v. Firemen's Fund Insurance Companies,* Lucas recounted the main points from what he characterized as Frank Richardson's "prophetic" dissent in *Royal Globe:* the refusal of other states to follow *Royal Globe,* the considerable scholarly criticism of the third party "bad faith" lawsuit, and "the undesirable social and economic effects of the decision (*i.e.,* multiple litigation, unwarranted bad faith claims, coercive settlements, excessive jury awards, and escalating insurance, legal and other 'transaction' costs)." In all respects, *Royal Globe* was a disaster. Lucas called it "irrefutable" that the Bird Court had made up the "bad faith" cause of action out of whole cloth. While Lucas did not say so directly, the unmistakable message of *Moradi-Shalal* was that the *Bird Court* had been guilty of bad faith in *Royal Globe.*

Moradi-Shalal restored much-needed balance to the civil justice system. Insurers regained the ability to de-

WHAT YOU HAVEN'T BEEN TOLD ABOUT GUN CONTROL

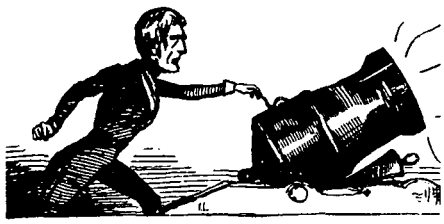
By WILLIAM E. SARACINO

The media finally found a shooting rampage by a deranged gun owner that is unworthy of attention.

You will remember that last September a fellow walked into a Fort Worth Baptist church and started shooting, killing five and wounding a score of others. The media at first announced that this would "reignite the gun control debate in America." Then suddenly the sounds of silence. No follow-up reports. No calls for renewed gun control or hate crime legislation.

It turns out that the attendees at this Baptist Church are very conservative evangelicals. It also turns out that the gunman was spouting anti-Christian curses as he entered the church sanctuary and opened fire. Police subsequently found anti-religious and specifically anti-Christian literature in the gunman's home. When these facts became evident the media instantly fell silent. You see for our media and our liberals, shooting Christians — let alone conservative ones — is not a hate crime.

President Clinton will not bite his lower lip during a eulogy. Congresswoman Maxine Waters will not insist that hate crime laws be expanded to cover conservative denominations. The ACLU will not be leading any candle light vigils. CBS will do no "in-depth" reports about how anti-Christian and anti-religious venom spewed into our society from so many quarters has "contributed to the atmosphere of hate" that motivated this crazed gunman.



But we must not forget this double standard, nor let it go un-noted. As President John Adams said; "We have no government armed with power capable of contending with human passions unbridled by morality and religion. Our constitution was made only for a moral and religious people. It is wholly inadequate to the governing of any other."

William E. Saracino is political director of Gunowners of California.

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CORRESPONDENCE

(Continued from page 2)

my idea for this year's hot, new political one-liner. He sighs. Holier Than Thou went out with button shoes, and talking about "lack of backbone" sounds "jingoistic" and, "most importantly," "rings hollow." He should do fine in San Francisco.

What Horowitz Did Not Say

David Horowitz did not say that George Bush's breaking of his word to the American people was morally sound; he said that trading a tax increase for the appropriations necessary for the Gulf War was morally sound. Yet because the ends do not justify the means, John Kurzweil condemns the combined acts as immoral. A little leavening leavens the whole batch.

It could be argued that countering David Bonior's "plainly phony charges" against Newt Gingrich for teaching a college course with the fact that Bonier did the very same thing would have illustrated the hypocrisy of the left and the phoniness of Bonier's charge. But since stating that fact is so much like leveling the initial charge, Kurzweil would condemn it as a lie.

Kurzweil states categorically that lying is always wrong, and implies that there is absolutely no situation wherein it is acceptable. I have heard pacifists make the same argument for the commandment, "thou shalt not kill," but this is the first time I have heard it applied to "thou shalt not bear false witness." Just as a pacifist should be given only non-lethal duties in time of war, Kurzweil should therefore never be given security clearance.

However, Kurzweil should be careful about his own writing. His hypocritical conversation with Horowitz is reminiscent of the fictional observer in the Ronald Reagan biography "Dutch." By his own strict definition of what is a lie, Kurzweil himself lies by reporting a conversation that never happened.

While Kurzweil disdains Horowitz's example of allegedly necessary lying, Kurzweil's first saintly example is that of a lie. While St. Lawrence counted the Church's treasure in souls saved, he knew full well that Valerian was asking for its material possessions. By the letter of the law, St. Lawrence's willful misunderstanding

of Valerian's definition of the word "treasure" was just as much a lie as was Ollie North's lie to Rep. Ron "Red" Dellum *[sic],* or Bill Clinton's willful misunderstand of the definition of the word "is." Therefore, it could be argued that St. Lawrence lied to save for the Church the material possessions necessary for its time of hiding. But by the spirit of the law, St. Lawrence told the complete truth, because Valerian's definition of treasure was the real lie.

We are in a culture war with the left, which Kurzweil correctly identifies as one of opposing faiths. Sun Tsu said that the art of war is deception. We must counter lies with Truth, not strain at gnats of the law about who lied and why, for enemy gets their power from the law [sic]. However, we must communicate Truth as cleverly as St. Lawrence did, in terms the undecided can see clearly but that the enemy can neither understand nor refute.

Norman Hines
Ridgecrest

John Kurzweil responds:

Mr. Hines marshals a legion of factual errors to defend a general proposition that is, in any case, untenable. First, as to the errors:

1) Mr. Horowitz wrote that "the act that caused George Bush to lose the 1992 election — making a deal with the Democrats that resulted in a tax hike .... was morally sound." He called this a paradox, nowhere arguing that the act could be justified by splitting it in two. That is Mr. Hines' invention, and a handy one it is. It could be used to rationalize any immoral act. *Neville Chamberlain did not say abandoning Czechoslovakia to Hitler was morally sound; he said that winning peace in our time was morally sound.* It is Mr. Hines' fantasy that I have combined what never was, and could not be, separated.

2) My objection was to Mr. Horowitz's advice that Republicans "respond in kind" to Bonier by filing "plainly phony charges." Mr. Hines' second paragraph condemns me for what I never did.

3) Mr. Hines has "never heard" anyone say lying is always wrong. But St. Augustine, according to the great scholar of the early Church John Henry Newman, was "the doctor of the great and common view that all untruths are lies, and that there can be *no* just cause of untruth." The Book of Proverbs, 12:22, informs us that "lips that lie are abhorrent to Yahweh." Of that admonition and many others like it in Scripture, the great contemporary American catechist Father John A. Hardon writes: "Throughout the ancient Covenant, all lying was severely condemned." In the middle ages, the Catechism of the Council of Trent similarly laid down an absolute prohibition on lying, adding the essential reason lying is always wrong: that, intrinsically, it reflects lack of faith in God: "The pastor ....

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fend frivolous auto accident lawsuits (many of which *are* frivolous). Juries proved surprisingly unsympathetic to contrived lawsuits seeking excessive damages for "whiplash" and other subjective injuries, by returning a high percentage of defense verdicts, *i.e.,* ruling against the plaintiffs. The "whiplash mills" and their stable of quack doctors were flummoxed. What had been, under *Royal Globe,* a cornucopia of riches for personal injury lawyers became, instead, a well-deserved dead-end.

PERSONAL INJURY lawsuits, especially those relating to auto accidents, declined precipitously, as did insurance rates. Price wars erupted as insurers bid against each other to cut premiums. To the plaintiffs' bar, this utopian situation was intolerable. Few contingent fee plaintiffs' lawyers operate in the high-stakes realm of mega-millionaire pirate Bill Lerach. Many more are sole practitioners depending upon flaws in the system and a high volume of weak cases to extract undeserved windfalls. To parasites in need of a receptive host, *Royal Globe* was a godsend, and *Moradi-Shalal* was Armageddon.

The so-called Consumers Attorneys of California (formerly known as the California Trial Lawyers Association), ever willing to favor their own interests over those of California's consumers, made reinstatement of *Royal Globe* their top legislative priority. The Democrat landslide of 1998 provided the opportunity. In 1999, the lopsidedly Democrat Legislature — elected with the benefit of plenty of trial lawyer money — passed two trial lawyer-sponsored bills: S.B. 1237, carried by Senator Martha Escutia, and A.B. 1309, carried by Assemblyman Jack Scott, signed as a package deal by Governor Gray Davis over the vociferous but unavailing opposition of the insurance industry. Together, the bills would negate *Moradi-Shalal* and largely reinstate *Royal Globe.* To avert the horrors this would create, a coalition of consumer, taxpayer, business, and senior groups led by the insurance industry qualified two referenda for the March 2000 ballot. These ballot measures also had the effect of postponing the effective date of the Democrat legislation from the usual January 1 until after the primary. The referenda campaign gathered nearly 1.5 million signatures in less than three weeks. A "no" on Proposition 30 would repeal S.B. 1237; "no" on 31 would repeal A.B. 1309. Insurers reportedly plan to spend up to $50 million to defeat Propositions 30 and 31, which, as referenda, cleverly capitalize on the undecided voters' preference for a "no" vote. (In a referendum, unlike an initiative, the objective is to secure a majority of "no" votes.) The plaintiffs' bar will spend whatever it takes to preserve their legislative victory.

The voters should be able to understand this: "yes" on Propositions 30 and 31 will increase the average driver's auto insurance bill by $300 a year, with commensurate increases for businesses, local governments, and homeowners — a total of $1.5 billion a year in increased insurance premiums and higher prices for goods and services. A great deal is at stake, more than just money. Symbolically, the Proposition 30 and 31 campaign is a showdown over who controls the political process in California — the personal injury lawyers or the average citizen. The Democrats in Sacramento have sold their souls to the special interests and the voters have the opportunity to send a powerful message: 1986 was not a fluke. CPR

THE WORKING PRESS

Picking Staples from the *Times'* Hide

The Times habitually misses meaty stories in its huge and dynamic circulation area. Self-flagellation over an ad deal is not one of them.

TIM W. FERGUSON

THE STAPLES Center scandal that shivered the timbers of the *Los Angeles Times* was investigated in a report as anti-climactic as anything from a congressional committee. It was issued by Pulitzer-winner David Shaw of the *Times'* staff and shepherded into the paper by half a dozen untouchable editors in clean-room suits.

It was boring. Very, very boring and 14 pages long. The

Tim W. Ferguson is California Political Review's *press critic.*

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THE COMMITTEE FOR RELIGIOUS FREEDOM

Defend Freedom of Conscience

If you believe that no government may legitimately tell us what to think about religion, morality, and politics; if you share our support for freedom of conscience, religious freedom, and free speech, then please use the form below to join us by adding your name as a signer to The Committee for Religious Freedom's Statement of Support for the three-judge panel decision in *Thomas v. Anchorage Equal Rights Commission.*

This Committee, which needs everyone's support, includes nationally-known Catholic, Protestant, and Jewish leaders: *First Things* Editor Rev. **Richard John Neuhaus**, nationally-known author Rabbi **Daniel Lapin**, Roman Catholic Bishop of Salt Lake City Most Rev. **George H. Niederauer,** *Life & Times* host **Hugh Hewitt**, Former U.S. Ambassador to the Vatican **William A. Wilson**, and Pastor **Laurence White** of Houston's Our Savior Lutheran Church. Please read our full statement and list of signers at our web site (www.cppf.org) or in *CPR's* Nov./Dec. 1999 issue.

These Religious and Community leaders support the January ruling in *Thomas v. Anchorage Equal Rights Commission* which upholds First Amendment religious freedom guarantees against lawsuits that would force landlords to choose between sacrificing their livelihood or renting against their religious convictions to unmarried couples. That ruling is now under review by an 11-judge panel of the U.S. 9th Circuit Court of Appeals.

"Landlords are accused of violating civil rights if they object on religious grounds to being forced to choose between renting to unmarried couples or going out of business," our statement reads. "But is it not *their* freedom of conscience and *our own* First Amendment Religious Freedom rights that are under attack?" If you agree that these rights should be defended, please sign and return this form today. Thank you.

I support the Statement of The Committee for Religious Freedom.

Optional: ___ Please keep me informed of the Committee's activities.

_____ _____
Signature Date

_____
Daytime telephone

_____
24-hour FAX

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Name and mailing address

A California Public Policy Foundation project • P O Box 931 • Camarillo • CA 93011 • 805/445-9183 • www.cppf.org

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Times' publisher, Kathryn Downing, was formally indicted for criminal neglect of the sacred principles of daily journalism. She tried to split the profits of a Sunday magazine supplement with its cover subject, a new downtown arena. She pleaded ignorance. She didn't know that a daily journalist never touches the money. Of course, she didn't know that, because she was plucked from another realm and put in charge of one of the world's great newspapers (it once called itself that) by the Times Mirror CEO, Mark Willes, who also doesn't know the rules. He once marketed cereal at General Mills, or so they say.

UNLESS SHE is so personally torn with guilt that she cannot face the attendant at the parking garage, Ms. Downing will survive this and so will Mr. Willes. They will survive until they displease Wall Street, which so far has cared not a whit about the Staples Center scandal. It isn't known how many of the *Times'* million-plus readers care about it, but clearly the paper's own holy scribes care passionately. They demanded Mr. Shaw's special boring section, and some of them got their pictures in it. Michael Parks, the editor, was in it, too, but there was no glory for him. He is the biggest goat in the eyes of his staff because they think he knew about and should have stopped this tawdry arrangement that Ms. Downing and her ad-salespeople cooked up. He is a Pulitzer winner himself and cannot plead anything but a bad memory.

Most *Times* readers would rather be told if it must do tricks for local johns like the Staples Center. But daily newspapers promote entertainment venues, especially the downtown ones, even when they're not getting a cut. Just as they shill for the paid sports and movies and television that inundate our off-hours.

But, oh, how this Staples deal got the press of the land into a lather. Coverage in all of the mushrooming number of media-watching media. A flood of tears for how far the *Times* has fallen from the glory days of Otis Chandler (who inserted himself at the height of the scandal with an open letter to the staff from Mt. Sinai, blasting Willes/Downing). The *American Journalism Review* commissioned William Prochnau, the hagiographer of David Halberstam and other Vietnam correspondents in his book *Once Upon a Distant War,* to put a full section together on the "Lost Angeles Times."

Really, the most damning of Mr. Shaw's findings was that the initial exposure of the Staples deal, which came in a couple of aggressive local weeklies, hardly dented the staff's consciousness. It was only when the *New York Times* and then the *Wall Street Journal* picked up on the story, and lent a note of Eastern opprobrium to the affair that the house journalists grew wild with rage. Mr. Shaw writes that his colleagues know little and care less about what these weeklies produce. Anyone who cared more about competing in Los Angeles than about the high priesthood of journalism would read them, because they contain good local stories that are not in the *Times.*

On that score, the efforts of a third alternative news source, the *LA Weekly,* should be noted. This left-liberal sheet is publishing the deepest political coverage in the market. An example was a cover story on Ron Unz that, while telling you everything you wanted to know about the man (and more), also pinpointed the bind he was in trying to get the GOP senatorial nod. He was going to be at odds with Tom Campbell on just those social issues — abortion, gay marriage, and the like — that he cared least about. On the rest of his agenda, there was little difference. Shortly after the piece ran, Unz dropped out.

The *Times* should devote a 14-page section some time to the many meaty stories in its huge and dynamic circulation area that it habitually misses. Self-flagellation over an ad deal is not one of them.

♣ ♣ ♣

You won't find working stiffs in the good seats at the Staples Center, and you won't find much cheering for the home team Lakers, either, the *Orange County Register* reported. What a surprise! It's a palace built for the haughty rich — fortunately with less government assistance than the Los Angeles City Hall crowd planned to give the developers until they were smoked out.

♣ ♣ ♣

Delaine Eastin may yet have to answer for the condition of California's public schooling. A scandal that resurfaced near the end of the year in her Department of Education may finally invite some critical press attention to that bureaucratic and kleptocratic miasma. The Clinton Justice Department (!) blew the whistle on Eastin's attempt to paper over the misuse of millions of federal tax dollars on bogus ESL courses run by Latino pressure groups such as *Hermandad.* (David Horowitz's *Heterodoxy* earlier had publicized the background to the story, including the political pressure put on one of Eastin's career staff who had unearthed the problem.) The feds' notice to Eastin (who claims she cleaned up the management of the program) drew spot stories in papers across the state — some of which had touched on the story in its early outcropping in 1998. But the

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San Francisco Chronicle continued a blackout.

♣ ♣ ♣

No one could ever accuse Senator Ross Johnson of missing an opportunity to pander to his middle-class base. And he was in fine form with his proposal on behalf of Senate Republicans to use the surplus taxpayer take to slash in half the tuition at the University of California and Cal State universities. The best thing to come of the state's fiscal problems of the 1990s were the increases in charges to those attending these campuses to levels more approaching the actual cost of providing the instruction there (such as it sometimes is). Because there is no means testing, the subsidy works out to be a massive transfer of wealth from working Californians to the reasonably and often exceedingly affluent families that populate these student bodies. Which is precisely why Senator Johnson wants to add to the largess. The proposal was duly noted in news stories and drew a smirk here and there. But where was the libertarian *Orange County Register,* which editorialized not a whit about its local guy? And might Johnson's customary ally, Senator John Lewis, or his staff chief, Dennis Brown, not have some qualms about being in league with the leftist lobbies that always fought Pete Wilson's moves to kick up the tuition?

♣ ♣ ♣

Somewhat along those lines, *The Wall Street Journal/ California* was the site of an interesting exchange between Velma Montoya, a (Reaganite) UC regent who objects to the creation of another law school at UC Riverside (enough lawyers is enough, she basically says), and Manuel A. Ramirez, presiding justice of the state court of appeal in Riverside. Justice Ramirez was clear, in a letter to the editor, as to what he hoped a UCR law school would produce: "the right kind of lawyers with a broad and powerful view of the law." Felix Frankfurter types, he underlines. Right on, Ms. Montoya.

♣ ♣ ♣

You knew there'd be this type of story: lead article on the *LA Times* "state page": "Good Times Yield Child Care Crisis." The economy is putting too many parents to work! For reporters who hang around the "helping professions," there will always be woe to report. Of course, when the economy is bad, then there is child abuse. Now there is neglect because, good as it is, it still costs too much for most families to get "care." And by families, the article is implicitly referring to one-parent households, but we don't want to go there, do we?

♣ ♣ ♣

The *Wall Street Journal* devoted a front-page story to the pinch that redwood-country California school districts are having because of the curbs on logging — and hence on the revenues that flowed to those schools. Interestingly, there was no state executive or legislative official quoted in the story. Usually you can't shut such people up when it comes to underfunding of schools. Of course, it gets complicated when you've got your enviro allies on the other side .... CPR

THE MIDNIGHT ECONOMIST

Educational Reform, Egalitarian Rhetoric

People differ greatly in interests, ambitions, talents, proclivities — and intellectual competence. We all are God's children, but not every young person is a young scholar.

WILLIAM R. ALLEN

IN DESCRIBING the scale of educational operations in California, the magnitudes of people and of dollars are impressive. In the current year, the University of California alone has more than 160,000 customers, and is spending more than $3.5 billion — nearly $22,000 per body. All state higher education has more than 1.4 million young scholars, and the bill is more than $12 billion. Enrollment over the next half dozen years is expected to grow by 500,000, an increase of 35 percent. Despite the massiveness of

William R. Allen is a discouraged and frustrated elitist in the UCLA Department of Economics who abhores hypocritical misdirection and waste.

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committed and proposed resources, evidence is distressingly persuasive that appropriate school reform at all levels is critical. Apparently more than in most other states, public schools in California are commonly miserable, and even the University of California is increasingly diverted and diluted in its essential functions. Required reform is more than institutional and procedural expansion and correction. There needs to be vastly greater sophistication of perspective and attitude, of criteria and standards.

THIS IS not to say all who come from high schools to the University of California are intellectual/professional basket cases. It has long been my expressed impression that the top two percent of UCLA students are as promising as the top two percent in previous generations. Even the top 10 percent are highly reputable. But going much below the 90th percentile means entering territory of mediocrity — and something like the bottom 40 percent have no proper business on a University of California campus. (This reflects the quality of grade school performance. A few years ago, an International Assessment of Educational Progress found the best 10 percent of U.S. grade school students doing as well as any other nation's best 10 percent. But the vast majority of American students perform below the international average.)

Are we sufficiently embarrassed and emboldened to want to correct manifold errors — errors of both philosophy and procedure — in the program of education? Are we sufficiently insightful and receptive to appreciate the nature, magnitude, and possible optimal resolution of problems? Are we sufficiently courageous and committed to face down inhibiting and dissembling vested interests and to make the shrewd and sophisticated and investments required for success?

There is little reason to anticipate that required reforms involving competition will emanate from the long-established public school monopoly. But calls for change are coming from the community, including the corporate component. One vigorous voice has been that of David T. Kearns, former chairman of Xerox Corporation. While he was chairman, Mr. Kearns proposed a multi-faceted "education recovery plan for America." The central *organizational thrust* of his plan was attractive. Public funds would even-handedly subsidize students, not schools directly. Highly flexible, largely autonomous schools would compete for students with programs tailored for prospective clientele and with teachers who are well rewarded for professionalism.

But eyebrows can be raised over some of the *substantive content* of education under the Kearns plan. After all the organizational emphasis on autonomy and initiative and product differentiation, Kearns tells us that "we must apply the same high standards to everyone across the board. College prep for the favored few has to go. Every student — without exception — should master a core curriculum equivalent to college entrance requirements."

Thus does simple egalitarian rhetoric arise. Education — to some extent even at the high school level and wholly at the college level — properly is, in its nature, an elitist activity and product. People differ greatly in interests, ambitions, talents, proclivities — and intellectual competence. We all are God's children, but not every young person is a young scholar.

Commentator Daniel Seligman, of *Fortune* magazine, cogently suggested in reply to Kearns's educational proposals that the educational system, while doubtless infested with many faults, fails in large part because "schools are overwhelmed by kids *incapable* of learning much." In powers of comprehension and analytic prowess, we are *not* born equal. It is *not* the case that "*every* student" — or even a majority of students — *can* master appropriate college entrance requirements.

But colleges across the country are now floundering in a tidal wave of clients. Two-thirds(!) of high school graduates are now going to college. (In the early 1950s, the proportion was less than one-fourth.) A huge proportion of these deluded young people are ill-equipped and unpromising clientele, lacking requisite talent, acquired skills, and cultivated aspirations. And, yet, the California state universities and the University of California seek still more bodies — and ask for still more resources at all institutional levels of schooling.

ALMOST ALL discussions of feasible and desired growth of educational facilities are couched in terms of "political and fiscal realities." Hardly ever do the politicians, editorial writers, and university administrators speak in terms of educational purposes, criteria, and standards. The question of *can* we accommodate all prospective applicants under current rules is different from the question of *should* we make "higher education" an entitlement available to everyone who may be inclined to apply.

Trying badly to do what cannot be done well generates frustration for those who fail and weakens the program for those who are inherently capable of high productivity. Under the banner of populism and egalitarianism, we squander our resources, demean the academically less talented, and fail to nurture our brightest. That is not a recipe for social prosperity and community greatness. CPR

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WASHINGTON LETTER

by Leon E. McKinney

California Congressional Delegation Report

Reps list 1999 triumphs, goals for 2000

Moves toward a Social Security/Medicare 'Lock Box', the drive to return the surplus to taxpayers, military preparedness, and the Red China threat.

In the spirit of the new millennium — which actually begins *next* year, but who wants to ruin a good party? — your **Washington** correspondent asked **California's** congressmen and women to list their most notable achievements last year and what they hope to do in 2000. Well, it turns out few Democrats *have* press aides, and of those that do, nearly all either failed to return my calls or, after one or two trys, failed to deliver their boss's response to my query. The exception was **San Francisco's** Rep. **Nancy Pelosi,** who was in **Taiwan** over Christmas break. Her staff tried to track her down or answer my question themselves. but finally gave up. By press time, California's Congressional **Democrats** had nothing to say, at least not to *CPR.* So, on to the **Republicans**, grouped under the policy areas they stressed:

SOCIAL SECURITY, MEDICARE, TAX CUTS — Background: last January, **Bill Clinton** ridiculed returning budget surpluses to the people, saying "we could give it all back to you and hope you spend it right." Later he said tax cuts must wait until "we figure out how we're going to save **Medicare**, save **Social Security**, and pay the debt off." So, Republicans proposed so-called **"Lock Box"** legislation requiring that Social Security and Medicare revenues become unavailable for any purpose other than funding — Social Security and Medicare! Clinton and the Democrats considered this idea so wild that they blocked it seven times, before it finally passed the House on the eighth try. It now goes to the Senate. Also àpropos Clinton's excuses for opposing tax cuts, he and the Democrats last year successfully blocked Republican efforts to:

- devote $2.2 trillion of the next ten years' expected **$3.3 trillion surplus** to debt reduction and return $792 billion to taxpayers ($300 billion to lower tax brackets one point each, $294 billion to eliminate the marriage penalty — for an average yearly saving of $1,400 for 42 million married taxpayers — phase out the death tax, reduce the top capital gains rate from 20 to 18 percent and the lowest from 10 to 8 percent while indexing gains for inflation),

- give the **self-employed** full **health care deductability,** raise contribution limits for **tax-free savings and pension plans**, permit **tax-free education savings accounts**, increase **childcare tax credits**, expand the **adoption credit**, create a new income tax **exemption for elderly care**, and split the remaining $300 billion of projected surplus between defense and domestic programs.

21st CD, Bakersfield/Visalia - Bill Thomas

Rep. Thomas listed several achievements in 1999. First was co-chairing with Louisiana's Democrat Senator **John Breaux** the Clinton-appointed **national Medicare commission**, whose recommendations the president later ignored. Thomas should be commended to the extent he had the commission actually

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address Medicare's many flaws instead of letting it become another anti-GOP artillery piece in Clinton's "permanent campaign." Thomas, who is third in GOP seniority on the **House Ways and Means Committee** and also sits on the **Joint Taxation Committee**, helped lead passage of the GOP's $792 billion tax cut through the House. As one of four GOP House members of the House/Senate Conference committee, he helped convince weak-kneed partisan colleagues in the Senate to sign off. That forced a Clinton veto, which clarified voters' alternatives in choosing between the Parties. Third, Thomas listed overseeing, as Committee chairman, the House Administration Committee's first-ever **clean audit** of the House financial books, done by **Price-Waterhouse Coopers Lybrand**. We have moved a long way from the banana republic days of **Jim Wright, Tom Foley, Dan Rostenkowski**, and the **House Post Office**-as-personal-piggy-bank.

23rd CD, Oxnard - Elton Gallegly

Rep. Gallegly says "we made progress in 1999 on improving education, strengthening Social Security and reforming health care by passing out of the House important bills on all three issues." Regarding Social Security, he is referring to the "Lock-Box" legislation. Gallegly rates as a major accomplishment incorporation of his **Gifted and Talented Student** bill into the **Elementary and Secondary Education Act** — rewarding excellence by allocating tax dollars to programs for bright students. Gallegly also touts his vote for GOP legislation giving HMO patients limited opportunities to sue, and his having won approval of $50 million for various environmental, public safety, and national security projects in **Ventura County**. An **anti-gang** recruitment amendment Gallegly introduced was appended to the juvenile crime bill that passed the House. In 2000, Gallegly wants to increase funding for local school districts requiried to fulfill onerous, Washington-imposed mandates that they educate "disabled students" without being given funds to do so. He wants to see the GOP's "Lock Box" bill pass the Senate.

51st CD, Escondido - Randy "Duke" Cunningham

As a member of the House Appropriations Committee, Rep. Cunningham helped pass what he hails as "a common-sense budget that saves the Social Security surplus, made zero tax increases, held the line on wasteful new spending, and helped meet **San Diego County**'s major priorities." Next session, he wants more local control and accountability in schools.

DEFENSE AND RELATIONS WITH CHINA — Background: Since the **Soviet Empire** fell, **China** has emerged as America's most serious strategic threat. Shrinking 1990s' **defense budgets** have brought deteriorating **military capabilities**. Overseas deployments quadrupled while military forces were cut one- third.

36th CD, Torrance/South Bay - Steve Kuykendall

Rep. Kuykendall's list is short and sweet: reversing nearly a decade of shrinking military budgets and deteriorating military capabilities through increased defense spending was 1999's most important accomplishment. In 2000, he intends to continue to "rebuild our national defense," pass tax cuts, and begin reducing the national debt without raiding the Social Security "Lock Box."

45th CD, Huntington Beach - Dana Rohrabacher

Rep. Rohrabacher, chairman of the House Subcommittee on **Space and Aeronautics**, is proud of his success in exposing the transfer of **U.S. missile, satellite, and other militarily sensitive technology** to Communist China. Beginning with 1998 hearings (that led to the formation of Rep. **Chris Cox**'s Select Committee on technology transfers to China), Rohrabacher has highlighted evidence indicating that China is America's most serious strategic threat. He alerted the public to China's increasingly brazen bullying of its weaker neighbors, such as its seizure of **Mischief Reef** in the **South China Sea**, and to China's growing influence in our own hemisphere. **COSCO**, the **China Overseas Shipping Company**, is a front op-

(Please turn to page 31)

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MYTH Fiscal Accountability at Public Schools

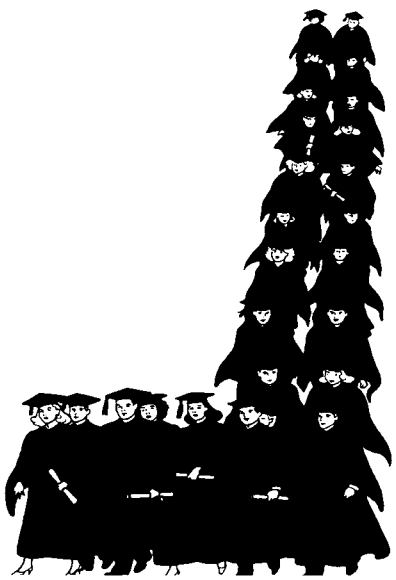
Go ahead — try 'inspecting' the records

by Carl Brodt

SINCE THE School Voucher initiative in 1993, apologists for the disastrous status quo in California's K-12 education have argued that issuing state-funded scholarships to children trapped in bad public schools would not meet basic standards of fiscal accountability. Public schools, they say, are less likely than private schools to short-change taxpayers because public schools' financial records and planning documents are open to public inspection.

The word for this argument is "hogwash." I know — I have recently spent considerable time trying to gather data to develop per student spending numbers for a study being done by the Pacific Research Institute (PRI). My experiences completely belie any notion that real fiscal accountability exists in California public education. To hold schools accountable for how they spend our tax dollars, voters must be able to answer two straightforward questions: How much does the government at all levels spend on my child or grandchild? and what do they spend it on? The detailed per student spending data required to answer these crucial questions for the current school year are virtually nonexistent. Worse, the financial data required to do per student spending calculations are hard to come by and even more difficult to interpret.

The hurdles start with even simple tasks like establishing initial contact to obtain financial data on



the schools. The most irritating hurdle I discovered while doing the study was erected by Fresno Unified School District's administrative offices, which had moved six months previously, disconnected their telephones, and never bothered to list new phone numbers with the information operator. Almost as bothersome is dealing with state government. Education and Finance Department employees working with education data are so specialized that a researcher would have to be tremendously lucky to find quickly the right person who could provide needed information or who could even to refer him to that right person.

And once you find the right office or department, getting people to provide data is usually a chore. Despite the Public Records Act, the functionaries consistently asked for justification for the financial data request. When office staffs reconciled themselves to having to yield up at least some of the treasured numbers, I discovered that the staffs would often still end up, sometimes intentionally, supplying incomplete information. At the San Francisco County Office of Education, for example, a staffer assured me that his program manager carefully abided by budget guidelines, so I asked for the total dollar amount of the program's budget. After a day's delay, the staffer informed me that neither he nor the manager knew what the total program budget was, and that neither or them could locate any document with the total program budget on it.

Even once all requested financial information is available, interpreting the data and working with them are uniquely difficult. All pretense that public access to the public school system's financial records and planning documents could provide an effective barrier against abuse of public funds fell completely away when I asked state and district financial managers follow-up questions about the data. These managers said re-

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peatedly that even *they* had difficulty with the details of state financial reporting, and that understanding the intricacies of "fund accounting" in education was not for the layman without a financial or accounting background. Interpretation of the data was made more difficult by different divisions of responsibility for K-12 education in different counties and by presentation inconsistencies in the district financial planning documents. Easily the most incoherent budget presentation, though, was the 412-page tome from San Francisco Unified — a book containing less than half the data necessary to understand costs at the district level.

Clearly, average voters, lacking both time to fight the bureaucracy gathering the financial data and the accounting training to interpret them, have little chance of holding the public school system accountable for its financial activities and plans. The state Department of Education not only has done little to correct this situation but actually has made matters worse. DOE feeds the public misleading per pupil spending calculations that omit several revenue items and maintains a website that provides out-of-date and understated per pupil spending data.

And, overall, district financial staffs have exhibited a lack of interest in improving public accountability by elevating the public's understanding of per pupil spending figures. As one of the more sophisticated district financial managers told me, "We don't look at our costs like that." Indeed, in a moment of stark honesty, he related a story showing how his management and that of the public school system actually *do* view public education spending, *i.e.* as a matter of protecting the financial turf and the money-based power of the four or five layers of bureaucracy in charge of spending the state's education budget. (In most districts, the layers are the federal, state, county, and the local ones; but in Los Angeles Unified, an extra regional layer exists between the district and the local.) This financial manager said he had been "counseled" by management to use financial euphemisms in talking about accounting matters so as to conceal or downplay what is actually going on in his district, and by implication, to insure that the public remains ignorant and passive while comparatively little of the money allocated to K-12 public education is trickling down to the classroom level.

In contrast to this complex funding system, involving five sources of funding funneled through various layers of bureaucracy — a system that provides the appearance of fiscal accountability but not the reality — a voucher program offers taxpaying voters a simple, clear approach to education funding. Under most such proposals, revenues to cover tuition at voucher-redeeming schools normally come from only one or two sources — the state and, possibly, the parent — and only one, thin, state-level layer of bureaucracy would administer the plan.

A voucher plan would almost entirely eliminate the bureaucracy's siphoning-off of funds meant to serve the children in the program. Voters would have better reason to believe that tax monies spent on education are used effectively because parents could and would impose fiscal accountability when they chose the best schools for their children — the fiscal accountability of the market.

Licensing Freedom

The Democrats boil a frog

by William E. Saracino

YOU'RE ALL familiar, I expect, with the old tale of the proper way to boil a frog. If you try to put the frog in a pot of already boiling water the frog will react to the pain and obvious danger and jump right back out. If you put the frog in a pot of cool water and gradually turn up the heat to boiling the frog will be lulled into complacency — and ultimate death — by the soothing warm water before he can react to the eventual scorching heat.

Liberals from FDR on have known and adopted this formula on their long march leading America from the land of the free to socialism and Soviet-style thought control. Witness their *jihad* against tobacco. Starting 20 years

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ago with solemn promises that all they wanted to do was secure separate non-smoking seating areas in airplanes, liberals now have America in a position where the maker of a product declared legal by the federal government can be vilified and financially destroyed because the product is unpopular with the "proper people."

AS THEY have done with tobacco, the Stalinists masquerading as liberals are now doing with firearms and the Second Amendment to the Constitution. The assault on firearms should be most alarming because it involves a conscious effort to nullify an original portion of the U.S. Constitution — and to set a precedent for more of the same later. (Recall Dick Gephardt awhile back fretting about the incompatability of free speech with honest elections, implying that free speech might have to go.)

Last year in California, the anti-freedom extremists who control the Democrat Party and our Legislature passed a swarm of new anti-gun laws. All went into effect on January 1. A reasonable person — in scarce supply in our Legislature — might think to wait and see how these new laws function before proposing even more. Unfortunately, reasonable people form a distinct legislative minority, and a whole new front in the war on personal freedom has been opened. The latest liberal scheme to erase the Second Amendment is to require firearms' registration and *licensing of all firearm owners.* Those behind this move to erode further fundamental American constitutional guarantees argue an analogy with driving: "if we license cars and drivers why shouldn't we license guns and gun owners?" Hmm. An interesting question if you have a room temperature IQ. Anything higher in the intelligence quotient will find the question ludicrous. The "right to keep and bear arms" was put in our Constitution by the founders specifically to protect the ability of individual citizens to protect themselves and their families. The founders saw this protection as necessary against tyrannical government as well as outlaws, brigands, and door-to-door salesmen. Any other interpretation simply ignores the founding documents and debates, not to mention the Federalist Papers.

I have looked high and low in the Constitution and cannot find a single mention of the right to drive. Even considering the "penumbra of rights" that allowed that senile old fool Justice Blackmun to find an abortion "right" in the document, I come up empty in my search for the right to drive.

With firearms, we are dealing with a right the founders thought important enough to put second in order of official guarantees. And we are dealing with a right that the anti-freedom mob in Sacramento is on the verge of expunging. No useful purpose exists for a list of registered guns and licensed gun owners except as a guide for future confiscation. Some of the Stalinist/Democrat leaders are now bold enough to admit that. Most, however, officially scoff at the notion — just as the leaders of the anti-tobacco crusade did 20 years ago when the topic of eventual outlawing of tobacco was brought up.

History provides no examples of gun owner lists aiding law enforcement in any legitimate purpose. New York City has had gun registration for 50 years. That registration list has not prevented one crime from happening. This may sound like hyperbole but it's true. People who obey the law and register their guns are highly unlikely to use those registered weapons if they decide to embark on a life of crime. New York City's gun registration law has prevented *zero* crimes from occurring.

Registration lists are of no help to law enforcement in preventing crime, and minimal help in solving crimes. More than 90 percent of weapons used in serious crimes are stolen or purchased on the black market — *i.e.* crooks buying guns from crooks. Only a liberal would be surprised to learn that Al Capone did not register his guns — and neither did the punk who held up the 7-Eleven somewhere in America last night.

The only reason for government to own a list of its citizens who own weapons is so that government can then come to your door and confiscate those weapons. An appealing interim step to the liberals is to make the fee so high and the requirements so onerous as to make firearm ownership a practical impossibility. The list serves no other purposes. It cannot logically serve any other ends.

THIS OUGHT to frighten friends of freedom of all political persuasions. As the debate in Sacramento develops we shall see who believes in liberty and who does not. This proposed legislation is a giant leap down the slippery slope of tyranny. It must be defeated. CPR

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Does the tax issue still matter?

Four years ago, *California Political Review* invited the then-six GOP presidential candidates each to answer a question on a key political issue of the day. All participated.

We extended a similar invitation to this year's six GOP campaigns. Five promised to answer (Hatch's operation, if in fact it is a campaign at all, never responded). Two, however, Bauer and Forbes, proved ultimately incapable of gaining approval for their responses through all the layers of their respective campaign hierarchies. Both *said* their answers were written but, even after more than a month, they never managed to gain all the required clearances, check-offs, and OKs. Readers may conclude for themselves what this may mean about the chances of a future Forbes or Bauer administration succeeding in taming the federal bureaucracy. We here publish the Bush, Keyes, and McCain campaigns' responses to the following inquiry from *CPR:*

The Heritage Foundation's December/January *Policy Review* reports several findings regarding American voters' current thinking about Republicans' bedrock issue, tax cuts. Last April, *Policy Review* reports, "Reuters/Zogby found 74 percent of likely voters agreeing with the need for a 10 percent across-the-board tax cut," only 25 percent disagreeing, and 60 percent supporting a flat tax with 31 percent opposed. In August, Zogby found 60 percent of likely voters saying their taxes are too high and a Harris poll taken in March found 60 percent support for a flat tax. Even so, *Policy Review* remarks that "in recent years, tax cuts have fallen sharply as an issue of concern to voters," offering as one explanation "a Fox News/Opinion Dynamics poll in March [that] asked registered voters if they believed politicians who promised to lower taxes. An overwhelming 87 percent said no, with just 9 percent saying yes."

Questions: How do you account for tax cuts' and tax code reform's strong support alongside relatively low interest in the tax cut issue? How will your administration handle the

GEORGE W. BUSH

Governor Bush makes proposals based on his conservative principles and what is best for America, not based on polls or politics. He believes tax cuts are essential for several reasons: to maintain economic prosperity and keep the economy growing; to make the tax system fairer, especially for low income Americans struggling to move into the middle class and; to keep the federal government from spending the money on new and bigger government. Americans will support a tax cut proposal if it is credible, has clear benefits, and comes from a credible candidate. Governor Bush has done the hard work of cutting taxes before. He advocated and signed the two largest tax cuts in Texas history — totaling nearly $3 billion. He has not only talked about cutting taxes, he has the results to prove his effective leadership on this issue.

Americans work more than four months a year on average to fund government at all levels. This high tax burden strips

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families of resources needed to solve pressing problems: some need better childcare, some tutoring for their children, and others access to after-school programs. The best way to help all families is to let each family keep more of its income.

Governor Bush's tax cut would result in a simpler, flatter, and fairer tax system. His approach focuses on reducing marginal rates to spur and sustain economic growth and help those struggling to make it into the middle class. Under his plan, the current five-rate tax structure of 15, 28, 31, 36, and 39.6 percent would be replaced with four lower rates: 10, 15, 25, and 33 percent. This flatter rate structure would mean lower taxes for all working Americans, with the highest percentage cuts going to those with the lowest incomes. The Bush tax cut focuses on five priorities:

• **Increasing access to the middle class for hard-working families** by creating a new 10 percent bracket and giving families more of their own money to spend by doubling the child tax credit to $1,000.

• **Treating all middle class families with greater fairness** by lowering the top middle class rate to 25 percent, raising the threshold for the child tax credit phase-out, greatly reducing the marriage penalty, and reducing the number of tax brackets from five to four.

• **Encouraging entrepreneurship and growth** by cutting the top marginal tax rate to 33 percent, eliminating the death tax, and making the R&D tax credit permanent.

• **Promoting charitable giving and education** by allowing non-itemizers to deduct charitable contributions, and by expanding Education Savings Accounts.

• **Allowing seniors to keep more of what they have earned** by eliminating the Social Security earnings test.

These priorities mark a very different direction from the current administration. Federal income taxes as a share of national income are the highest since World War II, when America had eight million men under arms. Yet the administration insists that tax cuts are "risky." Governor Bush does not accept that it is somehow "risky" to let taxpayers keep more of their own money. What is risky is giving politicians charge of a surplus, because a government of unlimited funds soon becomes a government of unlimited reach.

George W. Bush is governor of Texas.

ALAN KEYES

Every year millions of American citizens are legally compelled to render unto federal clerks a signed confession and accounting of their getting and spending surpassed only by the account they must give their Creator in their last hour.

When we open any aspect of our lives to the scrutiny of the government, we begin to accept the role of government in judging and controlling that aspect. Government is a practical entity — the only reason it needs to know things is to do something about them. When we grant government a right to know, we imply a right to control. For this reason, the income tax is a kind of universal solvent, dissolving the private and personal determination each of us should have to control responsibly our acquisition and expenditure of wealth.

Income taxes in any form, flat, steep, or wavy, fail to measure up to the stature of American Liberty.

— Alan Keyes

We have survived the income tax as long as we have because the habits of American liberty run deep, and this people whose liberty was originally forged in a fire ignited by a tax revolt, have not quickly or easily taken into their souls the habits of servitude fostered by the modern income tax regime. From time to time, as in California's Proposition 13, we still rise up in hot indignation at injustices in the mode and measure of taxation.

But our fitful and sporadic tax "revolts" are being patiently waited out by our leaders, like the increasingly exhausted attempts of a hooked fish to break free. Line is played out, the illusion of liberty is permitted, and all the while the deep conformity of the captive to the will of the captor is secured.

We should pause and remember to ask the fundamental questions before it is too late. We should resist the pressures to be concerned only about the amount or fairness of the tax burden, and instead ask whether the current form of taxation itself is legitimate. And we must insist that the ultimate measure of an American tax code's legitimacy is not simply the procedure by which it is adopted, and much less the revenue it produces, but the degree to which it is prudently ordered to the production and preservation of the character that befits a free people.

My answer to this question is: income taxes, in the current form, in any form, flat, steep, or wavy, fail to measure up to the stature of American Liberty. I can tell you, from my experience in America's towns and countryside this primary season, that the American people are ready to think with us about the question. I can tell you with confidence they are beginning to think well about it, as befits a free people.

What, concretely, should be done? We should abolish the

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income tax, root and branch, by statutory action, rendered secure by repeal of the 16th Amendment. This can begin to happen only consequent to a national, presidential political campaign that confronts this issue in a manly and rational manner. Such a campaign will win the moral authority to undo the servile income tax. The next Congress will receive, from the new president and the people, a mandate to abolish the income tax and to adopt new legislation to fund the federal government through tariffs, duties, and excise taxes (i.e. sales taxes) as the Founders intended. That same Congress, elected with such a president in such a campaign, could be counted on to initiate the 16th Amendment's repeal, and, under the president's moral leadership, urge ratification by the states.

The income tax will be replaced with the kind of taxes most people are already paying — the taxes on things we buy and that we pay only when we decide to buy them. What will be the result of this change? We will be taxed only after, not before, we decide how to spend our money. If we decide to save or invest it, we won't be taxed. As the case against the income tax carries the day, the artificial distinction between moral and economic conservatisms will happily fade from view. The conservative agenda is about self-government and how we preserve the character to sustain it.

Thus, the tax debate is an opportunity for conservatives to demonstrate the unity of the moral and economic agenda, and to demonstrate concretely the confidence we do and must have in the American people. It is a profoundly democratic opportunity and a great duty for anyone aspiring to be an American statesman and lead this people.

Alan Keyes is president of the Declaration Foundation and former president of Citizens Against Government Waste.

JOHN McCAIN

People are rightly skeptical that Washington will ever take action to fix our antiquated, overly complex tax system and provide Americans the tax relief they need and deserve. The current tax code is a 44,000-page catalogue of favors for special interests and a chamber of horrors for the rest of America. The average working family in America pays nearly 40 percent of their earnings to the tax man and many have figured our that recent tax reform efforts have not benefited all Americans, only those favored by Washington policy wizards and special interest lobbyists.

The current tax code is a 44,000-page catalogue of favors for special interests and a chamber of horrors for the rest of America.

— John McCain

On this issue as on many others, Americans have become cynical about politics because they don't trust politicians and don't believe the interests of average Americans are represented in Washington. I am running for President to reform the way our government and politics work, to restore America's pride at home, and her credibility abroad, and to renew the American dream for all Americans.

Empowering people rather than government is the key to economic prosperity, and fiscal responsibility is fundamental to our economic progress. That is why the key element of my economic policy will be to reserve 72 percent of the non-Social Security surplus to ensure the solvency of Social Security and Medicare for future generations. Without reform, either benefits would have to be cut or payroll taxes increased. We cannot break the sacred promise of Social Security nor impose a devastating tax burden on our children.

Key elements of my family security plan include: dramatically increasing the number of taxpayers eligible for the lowest 15 percent tax bracket so 85 percent of American taxpayers pay at the same flat rate; eliminating the obscene penalty that increases taxes for couples who get married; creating new Family Savings Accounts, expanding Education and Medical Savings Accounts, and increasing employer-matched pension plans which allows Americans and their families to save and invest for their future needs; and slashing the gift and estate tax that penalizes people for passing on the fruits of their labors to their children. And I would eliminate the unfair Social Security earnings test that penalizes senior citizens who may need to continue working to make ends meet.

My administration would begin by providing tax relief to those who need it most — lower- and middle-income families. And I would pay for family tax relief by cutting billions of dollars of pork-barrel spending from the budget, closing inequitable and unnecessary special interest tax loopholes, and using about one-quarter of the budget surplus that does not come from Social Security payroll taxes. As most polls indicate, Americans want and need relief from the excessive tax burden that prevents them from investing for their family's future. I will implement my message of reform by eliminating the influence of special interests from the tax code and making it fairer and simpler for all Americans.

John McCain represents Arizona in the U.S. Senate.

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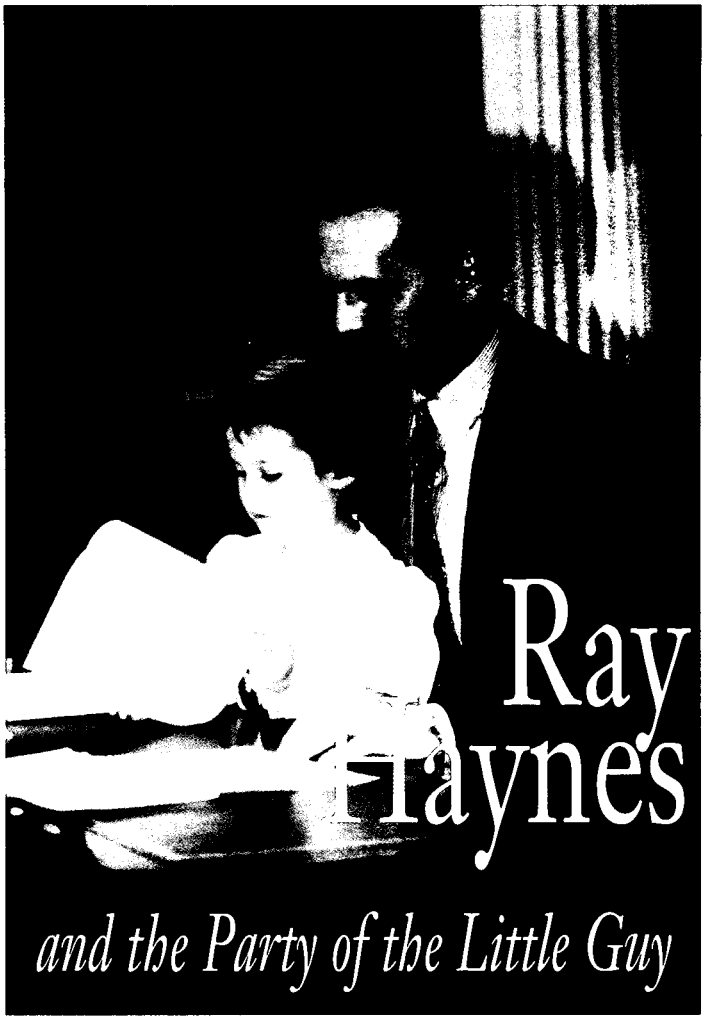

Ray Haynes and the Party of the Little Guy

How the IRS, the ACLU, and the Moreno Valley Planning Commission changed a McGovern Democrat into a Reagan Republican.

by John Kurzweil

AROUND THE middle of 1983, 28-year-old, life-long Democrat Raymond Neal Haynes Jr. made an unpleasant discovery. It was something his friends had neglected to tell him as he prepared, earlier that year, to leave Best, Best, & Krieger, the law firm where he'd worked for three years, to start his own practice. He discovered that the federal government requires employers to match their employees' social security tax payments when filing quarterly forms with the IRS. The amount required was only two or three hundred dollars, but for this particular small businessman just starting out, this surprise put him in the unpleasant position of deciding between paying his mortgage on time or paying the government. He knew he had to pay the government and did so, then scrambled for additional funds to make his mortgage payment by the 12th of the month.

The experience grated on him, but more importantly, it planted a seed of doubt in Haynes' mind about his conception of government, about his idea of Democrats as the Party of the little guy, of ordinary Americans, the idea his parents and grandparents had firmly believed, and passed on to their son. This idea had informed his political thinking through his growing up years in California's Central Valley town of Elk Grove, just south of Sacramento, and stayed with him during his semesters at Cal Lutheran University, at USC, where he earned his law degree, and, finally, through his first three years practicing law.

"I thought power resided in money," Haynes said of his early years. "I thought we needed government to take money from those that had it. I was wrong. You get money in the private sector by persuading others to work with you voluntarily. As an employer, I get paid last — employees first, creditors second, government third, me last."

At this same time, the Democrat Congress was battling President Reagan over raising the self-employment tax. In a now-familiar debate, Democrats argued that fixing social security meant the government had to take and keep more of our money. "The Democrats were in-

John Kurzweil is CPR's *editor.*

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sisting on increasing the self-employment tax," Haynes says. "Reagan was fighting to keep it in the 11 percent range. That was my first experience of how the Democrats were out to screw the small businessman. It didn't hurt the big corporate types, it only hurt guys like me who were barely making it."

This Congressional debate, coinciding with the squeeze applied by the social security tax, left Haynes, he said, "livid at the Democrats. And Reagan said, hey, I'm with the small guys, the small businessman, and I said: I'm with that guy." A Reagan Democrat was born, one who eventually registered Republican, was elected a GOP member of the California Assembly, and later of the state Senate, and who is now a Republican candidate for the U.S. Senate seat held by Democrat Dianne Feinstein.

BUT THE transformation of Ray Haynes was much more on the surface, on the level of partisan labels, than it was at the point of ideas about right and wrong. It was plain, as Reagan often said of his own move from Democrat to Republican, that Haynes had *not* left his Party, *it* had left him. Nonetheless, the specter of a newborn Republican appearing suddenly in the Haynes household was received with horror by the rest of the family, especially among its oldest members. "They all thought I had destroyed the family name when I changed and registered as a Republican — and then I *ran* as one," Haynes said, laughing. "You know, my grandfather, up to the day he died, thought I had done something very, very evil. But, it's interesting, my grandfather, in his heart, was a conservative. He just hated Republicans."

That was Ray's father's father, Owen Haynes, a farm boy born in 1909, 100 miles south of Chicago in Maquon, Illinois. "Very rural," Haynes describes it. "Thirty to 40 miles west of the quad-cities area, near the Iowa/Illinois border. You're out in the middle of nowhere." Owen Haynes married Oleva Woods and then, in the late 1940s, left the farm to move to Sacramento's Pocket area, taking a job with Union-Pacific Railroad. Owen was a Roosevelt Democrat through-and-through. Grandson Ray learned just how deep Owen's Roosevelt streak ran one day in 1990, during Ray's first run for the state Senate. Wondering why men like his grandfather kept voting Democrat even though "they don't believe most of what Democrats stand for," Ray tried an experiment. "I wanted to test the water. I got my grandfather and my father there, and I said, 'You know, Roosevelt destroyed America.' I will tell you — it was like I had started World War III in my house. Oh, man. 'Roosevelt saved our family,' Grandpa says. 'I was starving, and if it weren't for WPA, you're father would have starved and you'd have never even seen the light of day. Roosevelt did this for us and Roosevelt did that for us and Roosevelt *was King*. I mean, he was the best thing ever happened to this country. Without him, our country would have collapsed completely and those damn Republicans' — and then he sort-of started lightin' into it."

When the commotion died down a little, Ray said, "But Roosevelt was a socialist — and that's what the problem is with the current Democrat Party." That set off a second explosion. "No, no," the elder Hayneses answered, "Roosevelt's nothing like the Democrats now. And how could you become a Republican? How could you be one of them? You're not like them. You didn't grow up in some country club with a silver spoon in your mouth. That's all they care about — the rich people." But, for all that, Ray's grandfather liked Ronald Reagan, even though Reagan had become a Republican. "Ronald Reagan fought Communists," Ray said. "Communists were bad. Reagan fought them, and fought them hard, and that's sort-of what convinced them that Reagan was OK." Owen never supported socialist ideas. He opposed welfare, not seeing what he received from New Deal programs as welfare because he worked for that. He favored low taxes as well, but never supported Republican tax cutting proposals because he was convinced Republicans would never cut taxes for anyone but the rich. Owen Haynes, having lived nearly 90 years, died in 1999.

Ray's father and namesake, Raymond Neal Haynes Sr., at age 18, had a falling out with *his* father, Owen, when Owen announced, his son

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being now grown, that he should pay rent. Ray Sr. believed otherwise and said so, his father answering that, in that case, he should move out, which he did. It was 1951. Ray Haynes Sr. joined the Navy, but did not travel far. Assigned to Crow's Landing Naval Air Station in Merced, he continued dating Leona Faye Ollar, whom he met when they were both students at Elk Grove High School. Faye graduated Elk Grove the next year, 1952, and the following October, age 18, she married 19-year-old Ray.

Faye Haynes' family, surname Ollar, also came from a tiny, middle American, rural town: Poteau, in eastern Oklahoma. (It turns out that Republican Assemblyman Rico Oller's grandfather, one Buford Oller, was a cousin and

'How could you become a Republican? How could you be one of them? You're not like them. You didn't grow up in some country club with a silver spoon in your mouth.'

friend of *Winnie* Ollar, Ray Haynes' maternal grandfather. Several generations back, the two family branches divided over the spelling of their last name.) The Ollar family was desperately poor. Faye Haynes' parents, Winnie and Verna Ollar, both from farming families, had met and married in Oklahoma. Verna's family were quite wealthy Oklahoma farmers, but they disowned Verna when she married a man from the "other side of the tracks." The Ollars moved to California's San Joaquin Valley in 1938. Winnie became a Country/Western singer who sang in the bars and drank too much. He was, Ray says, "not a nice man. He was an alcoholic, wife-abusing, child-abusing, mean drunk. He'd work for awhile and then alcohol would get the better of him, or he'd lose his job," and then the trouble would resume. For 20 years, until an alcohol-related brain disease caused Winnie to pass out and drown in a bathtub, Ray's grandmother Verna spent her time traveling the San Joaquin Valley working in the fields and canneries to keep the family fed and away from Winnie.

"My grandmother," Haynes says, "was the classic welfare mom of today. I asked her once: you had five kids — five of her children lived, she had six, five lived — five kids, an abusive husband that you spent a lot of time running away from. What did you do? She says, 'I worked. I had to.' That's how they survived. Whatever they could do — they *did* have a lot of family, up and down the Valley, that helped. In that period, 1938 to 1958, she says, 'I went on government assistance twice.' And back then, pre-AFDC, government assistance was: you went to the social worker's office. They took you out; they bought the shoes; they bought the food, and as soon as you got a job you paid them back." The rest of the time, when she couldn't find work, Verna went to local churches or social service organizations. As soon as she was working again, she paid them back.

Ray once asked his grandmother what he should say to single mothers who come to the Legislature saying "My husband just took off and left me. There's nothing I can do. I have to have the welfare because I can't work because I want to raise my kid." "I said 'Grandma, you went through all that. You had five kids, not one. How do I respond to something like that?' and she says, 'Raymond, those women are lazy.'

"And I said, 'Is that what I tell them, Grandma?' And she says no, and tells some of the stories of how she did it and says, 'It ain't easy. It's hard work.' Then she told a story that happened after she finally settled down, around the time my Grandfather died in 1958, and she went to work at Campbell Soup in Sacramento. By 1965 or '66, when she was making $1.05 or $1.10 an hour, one of her co-workers, a single woman with one or two children, left Campbell Soup to go on welfare. And Grandma says 'I was livid. I told her so. I told her she was lazy, she could work here. She could take care of her kids, and work here. It's not easy, but it can be done. And she says, "Oh, no. I'm going to make more money on welfare. Why should I do all this?"' Grandma just said it was wrong; you shouldn't

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mooch off the government. She took charity only in the most desperate circumstances, and she always paid it back."

Verna Ollar took her family to the churches that gave her assistance. Ray recalls his mother saying "we always knew who the good people were in the church. We knew what a good family was supposed to look like, and we knew we didn't have it." He adds "It was not easy, but they got through it. Most of the kids turned out OK. One of my uncles is a multi-millionaire contractor — he never graduated from high school."

Ray Haynes' father, Raymond Neal Haynes Sr., left the Navy after a two-year minimum hitch during which, stationed in Merced, he had spent most of his time fighting fires in the western San Joaquin Valley. His oldest son, Ray Jr., was born in Merced in 1954. Ray Sr. left the Navy and, in 1960, moved the family back to Elk Grove where he and Faye still live today. Following Ray Jr., two daughters, Terri and Charlene, and two more sons, Randy and Richie, were born.

Ray Haynes attended Elk Grove elementary school, Joseph Kerr Junior High, and Elk Grove High School. Ray played defensive end for his high school football team until he tore up his knee his senior year. He was a math "whiz kid" and people encouraged him to consider engineering as a profession, but he preferred the law. He recalls being bored with math; it came too easily for him. Doing advanced "high math," pre-calculus problems in high school, he would finish 'way ahead of his classmates, he says, and sit there, bored. "I didn't want to be bored like that the rest of my life," Haynes said. "I'd try speech and writing and other things and wasn't as good at it. It was intellectually challenging. So I thought the law would be a constant intellectual challenge and I turned out to be right. I was attending Lutheran Church at the time and, coming from a small town, I thought I'd get lost at a big school," so he enrolled at Cal Lutheran University in Thousand Oaks.

Haynes' first political endeavor took the form of a bet, which he lost, with a high school friend that Hubert Humphrey would beat Richard Nixon in 1968. Through high school, he took his Democrat sympathies from his family. His father, although working two jobs, was earning $500 a month to support a family of seven. "Now, $500 a month in 1972 went further than $500 a month goes today," Haynes says, "but it didn't go much further. We didn't have any money at all. And a lot of my opinions, I figured out later, came literally from the 'politics of envy.' I had friends whose families earned a lot more money. Their fathers had money, they had their own businesses, they had the connections, their kids were working, they had money, they had cars, I had nothing. I was envious, there's no question about that. I didn't know that the guy's father who owned the local drug store, for instance, was working 13, 14, 15 hours a day. You don't see that when you're a kid growing up. You see the kids have money, not what Mom or Dad are doing."

Haynes' began to discover a voice for the political ideas he had grown up with when, at Cal Lutheran, he first read Marx and Hegel. "They struck me as true," he says. He thought it "obvious" that "rich folks had gotten their money wrongly and that they're just out to oppress the masses. My father was oppressed, and I was oppressed, so, therefore, Marx must be right. That was where I got the idea that money is power."

HAYNES SUPPORTED George McGovern in 1972 because he considered McGovern and the Democrats closest to the socialist ideal that he held himself. That ideal says working for profit is perverse, that people should work at the jobs they like, jobs they will do for the joy of working. Then productivity will flourish as money becomes a secondary consideration. Government's role is to help people find their ideal job and to see that the wealth produced is divided fairly so everyone has what he needs. School-to-Work and Goals 2000, Haynes points out, are based on this formula. "It's the idea of helping everybody find the job they love to do so they'll work for the joy of working. And then you won't have to worry

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about money and can equalize it. That's what the theorists write. Most of the left believes that people are inherently good, that the only reason they're evil is that other people make them evil. And those other people make them evil because of forces outside of themselves, so no one's responsible for their own evil." Haynes notes that no one gave him Hayek or von Mises to read in college. He had *heard* of someone named Bill Buckley, and, once, a fellow named Bill Rusher actually came to campus to speak, "but that was about the only seed of conservatism planted in a field of left-wing ideological inculcation."

After finishing Cal Lutheran in 1976, Haynes attended Eastern Kentucky University for a year where he received a Masters in Public Administration. He came back to attend USC Law School where he met Diane McDonald, whom he married in December 1979, just before his final semester at USC. Ray and Diane had one daughter, Jennifer, but after seven years the marriage ended, in 1986. Diane moved to Orange County with Jennifer where they live now.

Haynes graduated from USC and passed the bar in 1980. That same year, he went to work at Best, Best, and Krieger, a large Riverside law firm. That was Haynes' first introduction to the area he has now represented in the Legislature for nearly a decade. He ran his own law firm for about a year beginning in 1983 and, in 1984, joined David Horstpool and Bryan Hartnell as partner in a new law firm. Ray married Pamela Davis, whom he had met while working at the new firm. Pam and Ray's two children, Caitlin and Sarah, were born in 1991 and 1993.

After Ray's encounter with the real world of small business and with the hand of government seeking to fill us with the joy of working, a second element entered his life that again forced him to consider the contradictions separating the socialist ideal, the real world we live in, and the Democrat Party he still called his own. In December 1983, David Horstpool, who later became his partner, told Ray about a local prolife group that was fighting a major legal battle in Riverside over euthanasia, a battle against the ACLU with national news coverage. Haynes, who at the time had given little thought to the life issues and had no feeling for or against the ACLU, knew the high-profile case offered tremendous potential benefits for a young lawyer trying to establish himself. It was the case of Elizabeth Bouvia, a quadriplegic who wanted to starve herself to death and who demanded that Riverside General Hospital, where she was a patient, give her pain killers while she did it. The California Prolife Medical Association hired Haynes to fight the case. Ray met Dr. Nancy Mullen, a psychiatrist in Burbank who, at the time, was CPMA president. Dr. Mullen showed him pictures of fetuses. "I looked at them," Haynes says, "and I said, 'this is a baby' And she said 'Yes. That's sort of our point.' I said 'Well, it's not right to kill babies.' (You know, I'd never thought about it.) And she said, 'Yes, that's sort of our point.'"

Haynes also learned something about the ACLU. "The ACLU attorney was a Dr. Richard Scott. I thought the ACLU, at a minimum, would be honorable in the pursuit of the litigation. But Scott would lie to the court, hold things back from the court, do everything to cheat the court of the information it needed to make an informed decision, so he could win. Winning was all-important to him. You're talking about a lady who, if he won the case, would die. I thought he should care more about actually helping the woman, that if to die was indeed what she needed, that he ought to make sure that was *exactly* what she needed, instead of trying to win the case to make *sure* she died. Elizabeth Bouvia had a severe depression, but the ACLU wasn't interested in treating her true psychological problems. The ACLU was interested in killing her."

Haynes was finding the contradictions between the left's promises and the reality of its actions increasingly difficult to reconcile. "First, I find out that I've been lied to by the left about Social Security: that it's a grand retirement program when it is, in fact, a welfare program for old folks subsidized by a very severe tax on jobs. Second, I felt that I'd been lied to by the ACLU about its role in society which it said was to vindicate the rights of the individual. In this particular case, the best thing that could have happened to Elizabeth Bouvia would have been for someone to take a sincere interest in her life and help her get through her depression instead of trying actively to kill her."

Haynes beat the ACLU, winning the Bouvia

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case in Superior, Appellate, and state Supreme Court. Under Court order, Elizabeth Bouvia was force-fed. She finally said she *would* eat and was discharged from Riverside General Hospital. Three months later, having moved in with a family that was taking care of her, she said she wanted to live. More than a year later, she had a falling out with the family and moved to Glendale where she appeared at a hospital accompanied by the same ACLU lawyer. This time, arguing from a law that says patients can refuse treatment and from a court case that ruled food and water *were* "treatment," she demanded that the hospital give her pain killers while she starved herself to death. Haynes was no longer involved in the litigation. This time she won in court, but never went through with her suicide. "She's still alive today," Haynes said. "She never really wanted to die. She just wanted the attention." Final note on the Bouvia case: about three years after winning this second round, the ACLU attorney, Dr. Richard Scott, *did* kill himself, with a self-inflicted gun-shot wound to the head.

Haynes' final break with the Democrats came after he was appointed to the Planning Commission of the City of Moreno Valley in 1984. Following his recent experiences, the thought had begun to form in his head that maybe free enterprise actually was of some value. Then, watching those in government — friends of his who were responsible for his appointment — using their position to win money from developers essentially by telling them what to do with their land, he saw what he now describes as "a political system that was an extortion racket — on both the enviro and the pro-growth sides." Government had intruded so far into the land-use/planning process, that each side of the political aisle saw that the way to increase their power was to intrude even further against the private property rights of the people. "The major difference between the pro-growth people and the anti-growth, Sierra Club guys is that the pro-growth folks wouldn't ask for as much money. You could actually get your project approved if you paid your tribute to the government and to the politicians in terms of campaign contributions. But in addition to paying tribute, the no-growthers require that you become one of their buddies; you have to buy into their agenda completely."

Haynes opposed such business-as-usual and was eventually removed from the Planning Commission. He started a group, Citizens for Property Rights, to organize local property owners, help them get their projects through, and keep the pro-property rights movement alive. One day, a major client of his law firm, a developer, whose business had nothing to do with the political battles Haynes was fighting, fired Haynes as his lawyer, telling him a city council member had demanded he fire Haynes or he would never receive see another project approved. "This told me that protection of economic freedom — private property rights — was critical to protection of political freedom. My livelihood was threatened because I was exercising my free speech rights."

Haynes' reaction was to launch a recall against the city council member. It failed, but he then recruited a candidate to run against her in 1992 and she was defeated. That same year, Haynes was elected to the California Assembly. In 1994, he replaced veteran 36th district Democrat state Senator Bob Presley, who had chosen to retire rather than face Haynes at the polls.

TODAY, RAY HAYNES is a candidate for the U.S. Senate seat held by Dianne Feinstein. He's considered a long shot, but polls show most Republicans have not yet made up their minds how they'll vote in March. He's also called "extreme" and "right wing," paradoxically because he looks at ideas honestly and says straightforwardly what he thinks about them and that worries people. Whether or not Haynes goes to the U.S. Senate next year, his participation in this year's campaign should be welcomed by anyone weary of the vacuous consultant- and focus-group-driven GOP campaigns of the 1990s. Who knows? Maybe Haynes can even get the newspapers to consider an idea or two — something besides the "horse race" — this time around. Now *that's* a long shot. CPR

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Rose Bird

Not quite ready for canonization

Introduction

John Kurzweil

The various eulogies delivered after Rose Bird's death in December remind us that self-delusion remains the core of leftism. "She dealt with all of it with tremendous grace," said Santa Clara University Law School Professor Gerald Uelmen, pinpointing the exact polar opposite in personal attributes to those that defined the former chief justice's rancorous term on the Court. A Los Angeles Times *editorial, describing this "justice" whose madcap tenure was about as impartial and judicious as the rulings of East German Olympic Games' boxing referees during the Cold War, listed "dedication to legal principle" among the keynotes of her life. But no one topped Ninth Circuit Judge Stephen Reinhardt who sobbed at a Bird memorial service that "in some ways, she was just too good, too pure ...." and so was gloriously snatched off the Court by Heaven, in the form of a landslide 1986 rejection by California's voters.*

Reinhardt and the others were performing a religious ritual, a materialist's canonization. The left demands the sacrifice of every fiber of our being to the service of its party line, a sacrifice Bird enthusiastically made. She made the left's enemies — crime victims' rights, property rights, above all the rule of law and justice — her own, and so has received the reward of leftist sainthood, such as it is.

John Kurzweil is editor of California Political Review.

But this outpouring of revisionist history deserves an answer. To recall the real issues that figured in Bird's overwhelming rejection by the voters, CPR *reprints here excerpts of writings by Boalt Hall Law Professor Phillip E. Johnson that originally appeared during the year before the 1986 election. The Supreme Court Project, a predecessor of The California Public Policy Foundation, published them in three booklets; the first section is from* The Court on Trial, *which appeared in late 1985.*

The Voters Rejected Judicial Activism

Phillip E. Johnson

SYMBOLICALLY, THE election will be interpreted as a test of public acceptance of liberal judicial activism. The California Supreme Court in recent years has been a consistent and effective champion of liberal causes. The Court has taken an extremely broad view of what constitutes unlawful discrimination in employment, public accommodations, and jury selection. It has interpreted the state constitution's "right to privacy" broadly to include a right to publicly funded abortions, while giving a narrow interpretation to the tax-cutting Proposition 13. Overturning a long series of court of appeal decisions, it has made California one of the few states where public em-

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ployees have an explicit right to strike. It has expanded the opportunities for injured persons (and their lawyers) to recover large sums in damages from corporations, insurance companies and public entities. Above all else, the Court has been a dedicated protector of the rights of criminal defendants in general, and defendants sentenced to death in particular.

Not all the justices under attack participated in all the decisions just described, but Chief Justice Bird in particular has endorsed every liberal cause and frequently written individual opinions urging the Court to go still further. To those who believe that the Court's agenda is also the Constitution's agenda, this is all as it should be. To many other people, the Court is pursuing a controversial social program and calling it law. The vote in the nation's largest state on its liberal court — and especially on its liberal chief justice — will be widely interpreted as the next thing to a national referendum on the legitimacy of liberal judicial activism.

Bird's opinion in *People v. Brown* is the work of a justice who wants to make sure the Court does not run out of excuses to reverse death sentences.

May a Boys' Club Exclude Girls?*

CALIFORNIA'S UNRUH Civil Rights Act provides that "all persons within the jurisdiction of the state are free and equal, and no matter what their sex, race, color, religion, ancestry, or national origin are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever." The question in this case was whether the Unruh Act requires the Boys' Club of Santa Cruz to admit girls as members and permit them to use its facilities.

The majority opinion by Justice Grodin (joined by Broussard, Reynoso, and a temporary justice) held that the Boys' Club is a "business establishment" and that the exclusion of girls is "arbitrary." Grodin acknowledged that the Unruh Act as initially drafted banned discrimination in "all public or private groups," and that the final version of the Act limited its scope to "business establishments of every kind whatsoever." Although this legislative history could have been read as indicating a legislative intent not to cover non-profit organizations, the majority opinion thought that the qualifying phrase "of every kind whatsoever" indicated a legislative intent that the term "business establishments" should be given an extremely broad construction to cover all places of public accommodation or amusement.

Chief Justice Bird did not join the majority opinion, but once again chose to write her own individual concurring opinion. She quoted at length from the dissenting opinion of Justice Poche in the Court of Appeals, and her apparent purpose in writing separately was to give recognition to an opinion she thought excellent. Poche had argued that exempting non-profit fraternal or charitable organizations from the statute would permit a racist group like the Ku Klux Klan to provide athletic facilities for white children only. He also observed that exempting non-profit organizations that charge only nominal membership fees would allow organizations supported by wealthy donors to discriminate, when less affluent organizations that have to charge fees sufficient to cover the costs of operation would not be allowed to do so. The statute, he thought, must be construed sufficiently broadly to prevent these outrageous possibilities.

Justice Mosk dissented on the ground that, by specifying only business establishments and not other types of organizations, the Unruh Act deliberately left private clubs, charitable institutions and the like regulated. Against the majority's and Chief Justice Bird's desire to construe the Unruh Act broadly to fight discrimination in institutions of all kinds, Mosk posed the countervailing values of pluralism and freedom of association.

There may be good arguments for extending the reach of anti-discrimination law to charities and private clubs, but there are important countervailing considerations and the California Legislature made a decision to restrict the application of the Unruh Act to only a certain kind of institution — business establishments. Both the majority opinion and the Bird opinion rob this term of all meaning. The comments of Judge Poche, quoted at length by Bird and also referred to with approval in the majority opinion, are particularly revealing on this point. The Ku Klux Klan is a despicable organization, but that does not make it a business establishment. If we admit as legitimate the principle that statutes should be construed not according to

**From* The Civil Cases, *by Phillip E. Johnson, 1986. The case discussed here is:* Isbister v. Boys' Club of Santa Cruz *(1985), 40 Cal.3d 72, 219 Cal.Rptr. 150, 707 P.2d 212.*

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their terms, but broadly enough to prevent any hypothetical evil that judges think the Legislature ought to have prohibited, then we have simply abandoned the rule of law.

The majority opinion also uses the term "arbitrary" in an unusual sense. The majority concedes the Boys' Club has an intelligible and apparently reasonable basis for its membership policy, but then holds that policy "arbitrary" because there are also good arguments for a different policy. Arbitrary turns out to mean just controversial, or questionable. In the long run, equal justice under law is threatened — not protected — if we encourage the growth of arbitrary power in the judiciary.

The Death Penalty Cases*

ALTHOUGH THE death cases are not the most important part of the Court's work this issue has taken on enormous importance in the public debate because it stands as a dramatic example of what can fairly be called judicial civil disobedience.

The essential facts can be stated quickly. The death penalty has been upheld as constitutional by the United States Supreme Court, and the California Constitution specifically states that the death penalty does not violate any provision of our state constitution. We have had valid death statutes in effect since 1977, but they have not been enforced. As of this date [May 29, 1986], the California Supreme Court has decided nearly 60 death penalty cases, and has reversed the penalty in all but three. It would be misleading, however, to say that the verdicts in even these three cases have been affirmed because the cases remain in further litigation.

For example, the death sentence in *People v. Jackson* was affirmed in 1980 — yes, that's 1980 — but the Court has granted further hearings to determine whether the verdict in that case is proportionate to the penalty imposed in thousands of other homicide cases from around the state, even though the U. S. Supreme Court has held that such proportionality review is not constitutionally required. This far-reaching inquiry is certain to take many years, and of course new issues will come forward by that time requiring further hearings.

**Excerpted from Phillip E. Johnson's Opening Statement in* The Biltmore Debate, *May 29, 1986.*

The record of Chief Justice Bird in death cases is particularly noteworthy; she has voted to reverse every death verdict without exception. We are told, however, that we may not draw the obvious conclusion from this record. The chief justice and other members of the current majority deny any intent to impede the death penalty. They are just trying to see that it is carried out fairly. The blame for this situation, Court defenders insist, lies with the voters who passed the death penalty statute in 1978, commonly called the Briggs Initiative, which was poorly drafted and overbroad. This initiative measure replaced the 1977 death penalty statute enacted by the Legislature which the California Supreme Court upheld as constitutional by a four-to-three vote, with Bird dissenting in 1980. If the voters had left the law alone, this argument goes, the 1977 law would have been in effect and would have been enforced.

Now, this attempt to shift the blame to the Briggs Initiative, and to the 70 percent of the electorate that voted for it, is bogus. First, it has no application to the record of Chief Justice Rose Bird. She has voted to reverse every single death verdict under both the 1977 and the 1978 statutes, and on grounds so broad — often in opinions urging the Court to go further than it has — that no one familiar with the opinions can doubt that she would be pitching a shutout even if the Briggs initiative had never been conceived. It's possible that some other members of the Court might have voted to affirm more death sentences if the cases had been tried under the 1977 legislation. But this would mean only that these additional cases would continue being tied up in further review on the proportionality issue along with *People v. Jackson.*

I FREELY CONCEDE that the Briggs Initiative was poorly drafted and should never have been passed. The initiative was particularly foolish because it played into the hands of a set of justices who were already committed to preventing the death penalty from being carried out. In fact, the controversial parts of the Briggs Initiative gave prosecutors very little of any real value.

Consider the most important of the so-called "defects" in the Briggs Initiative, the provision that made killings committed in the perpetration of certain dan-

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gerous felonies eligible for the death penalty without a requirement that the jury find the defendant actually intended to kill somebody. The California Supreme Court decided in 1983 that intent ought to be required and has reversed dozens of pre-1983 death verdicts because of the absence of this intent instruction. In all these cases the evidence that the defendant intended to kill was overwhelming, and the verdicts would have been the same if the intent instruction had been given. A problem exists only because the California Supreme Court waited five years before telling the prosecutors that it was necessary to give the instruction and then applied the new rule retroactively to all the cases pending on appeal. Despite the state constitution's express command that a judgment may not be reversed for procedural error unless a miscarriage of justice resulted, the Court majority has strained mightily to find some way to justify finding that failure to give the instruction was always prejudicial. I could give any number of examples — my favorite is *People v. Fuentes,* where Chief Justice Bird speculated that the robber might have shot the Brinks guard five times at short range because he wanted to make the guard drop the money bag, not to kill him.

In another case, the majority speculated that a contract killer who executed three persons, pausing to reload the shotgun each time in between, might have lacked criminal intent because he used drugs.

ANYONE WHO doubts that Chief Justice Bird has been exploiting opportunities to "stonewall" the public on capital punishment should study the December 1985 decision in *People v. Brown,* where the Court reversed the death sentence of a man who kidnapped, raped, and murdered a 15-year-old girl on her way to school. The majority reversed because the trial court gave a standard instruction asking the jury not to "be swayed by mere sentiment, conjecture, sympathy, compassion, prejudice, public opinion or public feelings." This platitudinous instruction is on the whole to the benefit of the defense and automatic reversal on this basis is absurd, but I'm pursuing a different point.

One of the penalty issues argued in all the Briggs Initiative cases is that the standard penalty instruction is defective because it uses the word "shall" rather than "may," and thus fails adequately to convey the point that a jury has wide-open discretion to show mercy. In the seven years that the initiative has been in effect, prosecutors have repeatedly begged the Court to give a decision on the validity of this instruction and to tell them, or rather to tell the trial courts, what instruction ought to be given if the statutory one is defective. The Court has again and again put off these requests, saying it was unnecessary to reach the "shall instruction" issue because the Court planned to reverse anyway on other issues like the sympathy instruction. Finally, in *People v. Brown* the prosecutors managed to shame the majority into deciding the question and even into approving an alternate instruction that would pass muster. Because of this belated action, trial judges no longer have to guess what instruction the Court wants.

Chief Justice Bird objected to this overdue but welcome action. She asked why it was necessary for the Court to reach this instruction now. If the Court could delay giving trial judges guidance on how to instruct jurors correctly for seven years, why could it not wait seven more? Bird's opinion in *People v. Brown* is the work of a justice who wants to make it as hard as possible for the trial courts to do the job right, in order to make sure the Court does not run out of excuses to reverse death sentences.

I am not offended by the Court's records in the death cases because I am an enthusiastic supporter of capital punishment. Although I am persuaded that the death penalty is neither immoral nor unconstitutional, I am impressed by the argument that trying to impose it under present conditions does more harm than good. I respect persons who oppose capital punishment openly and by honest means, in the Legislature, before public opinion, and even in the judiciary. What I do not respect is a justice who pretends to acknowledge the principle that it is ultimately for the public to decide whether the death penalty is legitimate in California, but who creates an elaborate obstacle course of legal trickery to make sure that the penalty is never carried out. This strategy of obstruction by sophistry has predictably brought the Court into disrepute and it has trivialized the legitimate moral case that can be made against capital punishment. Instead of debating as we ought to — whether life imprisonment is sufficient penalty for persons who commit horrible murders — we find ourselves debating whether a contract killer or a robber who fired bullets into his victim at short range lacked the intent to kill. No wonder support for capital punishment in the public is skyrocketing.

We've heard much talk about judicial independence in these days, as if independence meant the inherent right of high court judges to do exactly as they please. Our California Constitution does protect judicial independence and that independence will be secure as long as the courts remember that the purpose of independence is to preserve the rule of law, not to guarantee that we will be ruled by judges. ###

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Washington Letter

(Continued from page 14)

eration of the **Chinese Army** thugs who murdered the **Tienamien Square** freedom demonstrators. COSCO was just barely prevented in 1998 from buying **Long Beach Naval Shipyards,** thanks to Rohrabacher and his Republican colleagues. Late last year, when another of **Jimmy Carter**'s foreign policy errors, the **Panama Canal** transfer, came home to roost, Rohrabacher helped publicize that a **Hong Kong**-owned/China-controlled company, **Hutchison Wampoa**, holds the contract to administer the ports at both ends of the canal. In 2000, Rohrabacher wants to spend taxpayer dollars for research on creating a **space-based electric power grid** using satellites to beam solar power to earth and constructing **space launch vehicles** for space access at one hundredth the **space shuttle**'s cost.

47th CD, Newport Beach — Christopher Cox

In 1999, Representative Cox continued his sterling work chairing his House **Select Committee on technology transfers** to China. His dogged determination and collegial but firm dealings with Committee Democrats brought unanimous passage of the Committee's late 1998 report. Its potency can be gauged by Clinton's stalling and obstruction of its release, dragging out to nearly five months the "vetting" process — intended to keep national security information from being exposed — that should have taken two weeks. Cox's report showed (1) China has surreptitiously obtained design information for all **U.S. nuclear weapons,** (2) the prime suspect for the espionage was then still working at **Los Alamos Labs,** and (3) **Janet Reno** did everything to stop the investigation except arrest the investigators. Embarrassed Democrats forced Clinton to sign into law two-thirds of the Select Committee's recommendations to strengthen critical technology protections, a victory Cox considers his prime accomplishment for 1999. His main 2000 goal is a **Republican Congress** and **White House.**

52nd CD, El Cajon/Imperial — Duncan Hunter

Like **Kuykendall,** Rep. Hunter says his major accomplishment last year was reversing the trend of cutting defense, including working to close the **civilian-military pay gap** that made it difficult to retain highly-skilled soldiers, sailors, and airmen. For 2000, he promises more of the same.

General Domestic/ Local Government Issues

38th CD, Lakewood/South Bay — Steve Horn

Rep. Horn lists completing Congress's four-year assessment of **federal government Y2K readiness** as his signal 1999 accomplishment. Horn held 44 hearings during those four years and pushed federal agencies to allocate resources to handle Y2K. And for once, as we've seen, the federal government apparently did something correctly. He's also proud of obtaining full funding for the **LA Flood Control Project,** to be completed in 2001, and of his work on **HMO** legislation also cited by Gallegly. Horn is a co-sponsor of the Democrats' favorite hobbyhorse: the **Shays-Meehan** campaign finance "reform" bill. Horn's constituents might want to remember what Speaker-In-Waiting **Dick Gephardt** said in support of Shays-Meehan (and the **McCain-Feingold** Senate companion bills): "What we have are two important values in direct conflict: freedom of speech and our desire for healthy campaigns in a healthy democracy. We can't have both."

41st CD, Diamond Bar — Gary Miller

First on Rep. Miller's list was directing 28 million taxpayer dollars to the **Santa Ana River Project** and 5 million more to resuming construction of the **Prado Dam,** two projects that he said will protect Southern Californians against "200-year" floods — floods of a magnitude and potential destructiveness statistically likely to come once every 200 years. Miller's second item was sheparding a $1.5 million taxpayer grant to the city of **Ontario** earmarked for high-tech law enforcement equipment such as hand-held palm computers capable of providing information on criminal suspects, and $500,000 for a regional science and technology center in **San Bernardino County.** Thus, Miller's 1999 focus was bringing home the bacon to his district. In 2000, Miller hopes to increase **visa waivers** for skilled foreign nationals, such as Koreans, who make up a significant part of his constituency.

48th CD, San Clemente/Vista — Ron Packard

Rep. Packard's proudest 1999 achievement was passing the **Energy and Water Appropriations** bill on time and within budgetary guidelines through the Energy and Water Appropriations Subcommittee he chairs. "Water is the lifeblood of California," Packard said, pledging to keep working so "that California's needs are met in a fiscally responsible fashion."

49th CD, San Diego — Brian Bilbray

Rep. Bilbray is most proud of two of his bills: one of which has become law, adding **San Diego's Otay Mountain** region to California's wilderness reserves, and a second — his "beach cleanup bill," which passed the House and is now in the Senate — amending the federal **Water Pollution Control** Act to improve, he hopes, the quality of coastal recreation waters. Final passage of the beach cleanup bill and ensuring that Social Security remains off-budget are his 2000 goals. ☐☐☐

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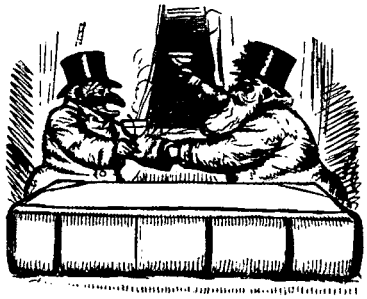

CRITICUS

Be it Resolved

BY G.B. TENNYSON

NEW YEAR'S Resolutions have their origin in pre-history. Charles Panati's *Extraordinary Origins of Everyday Things* asserts that the earliest recorded instances of making such resolutions occurred 4,000 years ago with the Babylonians. Panati is not always totally reliable in his explanations of origins — he is wrong about the Barbie doll, for example, though in this he was probably following the propaganda given out by Mattel (the true story in a future "Criticus" should there be any demand) — but he is certainly in the right neighborhood in noting that New Year's Resolutions are of great antiquity. The Babylonian resolutions were of a somewhat loftier kind than determinations to lose weight or stop smoking; theirs usually consisted of intentions to pay off debts and return borrowed items. Much the same is true of other times and tribes. An out-with-the-old, in-with-the-new impulse often came also with extravagant and wanton celebrations, followed by the resolve to improve. It appears that there is something close to a universal need to mark an annual turning point with resolutions regarding improved conduct. That being said, the differences between contemporary western ideas of New Year's Resolutions and the ancient and traditional ones are almost as great as the similarities.

In the first place, the New Year was most often celebrated in the spring at the vernal equinox, though there are instances of its being marked at the summer solstice, at the autumnal equinox, and at the winter solstice. All of these solar turning points would have had considerable significance in agricultural societies. The springtime one marked the beginning of the season for sowing seeds, and the autumnal one marked the harvest season. Are there any among us who remember that rousing hymn that celebrates both the sowing of the seeds and the reaping of the harvest?

Sowing in the morning, sowing seeds of kindness,
Sowing in the noontide and the dewy eve;
Waiting for the harvest, and the time of reaping,
We shall come rejoicing, bringing in the sheaves.

The Chorus, of course, twice repeats "bringing in the sheaves," and ends with the repeat of the final line, "We shall come rejoicing ...." etc.

Yes, Criticus can sing it still, those words that link renewal and reward with the turning points in the solar year. And, in the spirit of the Old Time Religion from which hymns like this stem, we note that by

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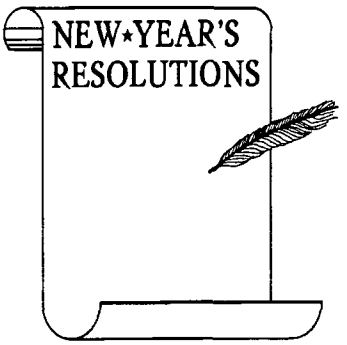
verse three the nature of sowing and reaping as metaphors for conduct is made explicit: the sowing is our life's conduct, the reaping is the fruit of that conduct, sometimes fraught with sadness and remorse. But for that sowing and reaping in the fullness of His mercy "He will bid us welcome" as we come "bringing in the sheaves."

It is not surprising, then, that most of Christendom, following Dionysius Exiguus's calendrical purifications, marked the New Year in the spring, most specifically on the twenty-fifth of March, known in English-speaking countries as Lady Day, more formally as the Feast of the Annunciation. England and the American colonies observed that day as the beginning of the New Year until 1752 when the Gregorian calendar was finally adopted by England. That transferred the New Year to January 1st, as had been the Roman custom from the time of the introduction of the Julian calendar. That in turn was the recovery date, so to say, from the celebration of the winter solstice, known as the Saturnalia and reviled by early Christians as pagan and wanton, which it was. Holy Church substituted Christ's birthday, the 25th of December, that being exactly nine months after the Annunciation and neatly falling almost at the solstice. (Until the correction made by the Gregorian calendar the date was December 15th; see "Criticus" in the previous *CPR.)* Of course the date was arbitrary and, as modern scholars believe, erroneous. Nevertheless, it gave religious sanction to the idea of January first, the Feast of the Circumcision, as the start of the New Year and another way of supplanting pagan revelry with Christian piety. The Church also added the sombre Advent Season to precede Christmas as a way of toning down the Saturnalia.

None of this entirely worked, of course, as the persistence of New Year's revels attests. And in modern America's secular culture it works even less. The Advent season and even Christmas itself have been transformed into a kind of month-long party time so popular that American Judaism has been moved to elevate the once trifling festival of Hanukkah as a rival and a black academic changed his name to an African one and invented a so-called harvest festival he named Kwanzaa. Thus we have the eight days of Hanukkah and the seven days of Kwanzaa and something like the thirty-plus days of Christmas. Which brings to mind the following little vignette for our times.



England and the American colonies observed March 25 as the beginning of the New Year until 1752 when the Gregorian calendar was finally adopted by England.

Receptionist in dentist's office to Criticus: "Your appointment will be on January 5th."
Criticus: "Ah, Twelfth Night."
Receptionist: "No, the fifth."
Criticus: "I mean Twelfth Night as in Shakespeare." (Mute stare of incomprehension from receptionist.) "You know, as in the "Twelve Days of Christmas."
Receptionist (in doubtful tone): "Well, I've heard the song."
Criticus: "We'll leave it at the fifth, then."

Still, some fragments of the serious side of things can be shored against the ruins. They show themselves in such notions as depicting the New Year as a babe in diapers (an unconscious reference to the Holy Child?) and the old year as a grey-bearded man (Old Nick or just old man?); or setting off firecrackers, blowing bells and whistles, banging gongs and cymbals to chase away the old and greet the new; or the Texas custom of eating black-eyed peas on New Year's day for luck; and, one of the most engaging of all, the Mexican practice of always putting on fresh underwear for New Year's Eve (one hopes that is not the *only* day in the year that this is done). But ever along with all that we have the persistent custom of making those New Year's Resolutions.

AS RESOLUTIONS go, paying off debts and returning hedge clippers, albeit pedestrian, have to do with moral behavior. By contrast, resolutions in America center on one's physical well-being rather than on one's moral, let alone spiritual, state. There may be those who vow to themselves not to miss another Sunday or Holy Day in church, but the most popular resolution must be the one about losing weight, closely tied in with general matters of diet, such as consuming less of various foods and drink. Second must be the one about cigarettes, though such a resolution seems supererogatory

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now that the state has taken it upon itself to criminalize that activity, going so far as posting hot-line numbers in grocery stores that one can call to report the sale of cigarettes to minors. You remember minors, of course: they may wamble about in casinos and may well be provided with condoms at state expense, but God forfend that they possess a cigarette. Ah, enlightened liberalism.

In the spirit of the season Criticus himself made the customary resolutions. A few Constant Readers can imagine what those resolutions touched upon, but for the weaker brethren it is better that they not be itemized, lest they lose faith in Criticus's guiding wisdom. Or as the radio queen of the ten-minute sermonette, Dr. Laura, likes to put it, "Do as I say, not as I did." (That was designed to head them off at the pass, but, alas, the pictures have long since been flashed about the Internet.)

Receptionist in dentist's office to Criticus: *'Your appointment will be on January 5th.'*

Criticus: *'Ah, Twelfth Night.'*

Receptionist: *'No, the fifth.'*

So, following the television coverage of the New Year around the world (Paris won hands down), Criticus pondered his conventional little resolutions until a loud, large voice sounded in his mind, saying "Clear your mind of cant," and he realized he was on the wrong track.

The voice was, of course, that of the great Dr. Johnson, who spoke thus to Boswell and, thanks to Boswell's dutiful note-taking, also to us in these aftertimes. *Cant* is a word not much used anymore, but it dates from at least the sixteenth century and was most widely used in the eighteenth and nineteenth. It appears to derive from the same source as *chant, descant, cantor,* and many others, all ultimately from the Latin *cantare,* to sing. But *cant* came to mean, first, a kind of whining, artificial way of speaking, then a jargon peculiar to rouges and thieves, then a sort of formulaic, perfunctory phraseology, and by Samuel Johnson's time (as we learn from the *Oxford English Dictionary),* phrasing "taken up and used for fashion's sake, without being a genuine expression of sentiment" and, in its most negative character, "affected or unreal use of religious or pietistic phraseology; language implying the pretended assumption of goodness or piety." As Johnson went on to say: "You may *talk* in this manner; it is a mode of talking in society; but don't *think* foolishly."

Oh, dear. Was Criticus in composing his would-be pious little resolutions letting his mind fill with cant? As Johnson also said to Boswell of a certain cleric, one Dr. Dodd: "He may have composed this prayer then. A man who has been canting all his life, may cant to the last." And as the incomparable Lawrence Sterne said, "Of all the cants which are canted in this canting world, the cant of criticism is the most tormenting." Even the ever-optimistic Americans agreed: "Criticism is infested with a cant of materialism," said Emerson. And James Russell Lowell put the case with withering scorn: "Enthusiasm, once cold, can never be warmed over into anything better than cant."

So Criticus threw out all his canting resolutions and started on more high-minded ones. Such as:

• Do not discuss the dating of the Millennium any more. You have become a bore on the subject.

• Stop reading junk mail, especially those catalogues that want to sell you such things as two sets of "washballs" for $14.98, washballs being little round colored balls of some sort of fluff that allegedly will collect lint and pet hairs from your wash, as if there were no lint filter.

• Stop reading virtually every word of the daily paper, perhaps cease with it altogether and substitute the Internet as a youthful Constant Reader of Criticus's acquaintance has done, anticipating Tim Ferguson's advice in the last number of *CPR.*

• Restrict that most pernicious of addictions, namely, watching television news with its ceaseless non-news fear-mongering — "Could your child get lice?" "Do you know what may be lurking in your refrigerator?" "How safe are prescription drugs?" "Can you trust the labels on packaged goods?" "Are you being cheated at the checkout counter?" Always followed by "Coming up" or "Later in the program" and then a switch to commercial.

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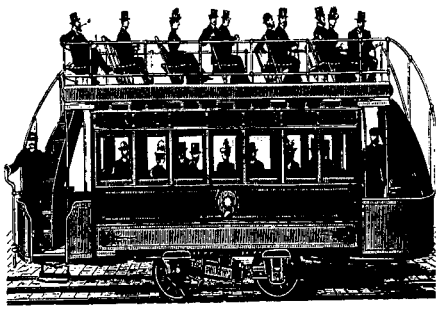
• Make a contribution to the Southern Military Institute. Persuade *CPR* editor to do likewise.

WELL, I was rolling along in this vein when, lo, this time the proverbial still, small voice broke in with, "What after all is a resolution anyway?" I replied, "Ha! We all know what a resolution is, don't we? We resolve to do a certain thing." "And resolve? What is that?" replied the voice. Before I could answer, it went on: "Remember Hamlet's soliloquy? The one about the solid (or, as purists have it, the 'sullied') flesh?" Of course Criticus remembered. As every schoolboy knows, Hamlet's second most famous soliloquy begins: "Oh that this too too solid flesh would melt, / Thaw, and resolve itself into a dew." *Resolve* itself? Make a *resolution* of itself? Determine itself to do something? Choose a firm course of action? No, as every schoolmaster knows, *resolve* here means *dissolve, liquefy,* in fact to cease to be itself, even to cease to *be.* Hmm. How can *resolve* mean to make firm *and* to disappear, to implement *and* to melt away?



A few Constant Readers can imagine what Criticus's resolutions touched upon, but for the weaker brethren it is better that they not be itemized, lest they lose faith in Criticus's guiding wisdom.

So it was back to the glorious *Oxford English Dictionary.* Tempering the wind to you shorn lambs, and mindful of space constraints, Criticus will not this time trace the entire path he was obliged to take through the forest of entries under the words *resolve* and *resolution* (30 pages of computer printout). Instead I will simply reveal the results of my inquiry, which I believe has unearthed a linguistic first. Those results are that both *resolve* and *resolution* are among the very small number of words in the English language that carry antithetical meanings. I consulted a cunning academic linguist of my acquaintance to ascertain the term for this phenomenon, and he told me there was no such but that he himself had in a learned article coined the term "homonymic clash." What we are talking about here is the issue of words like *let* and *let, cleave* and *cleave.* And an interesting issue it is.

As every English major used to know, *let* means both to permit and to hinder, *cleave* means both to sunder and to cling to. Properly put, I suppose one should say that they are each different words that time and the vagaries of English spelling ended up making look identical. Now to this exclusive club we may admit *resolve* and *resolution.* That aspect of these words that suggests melting or dissolving is nowadays rather less frequently encountered than the aspect that means to make firm, to determine, to fix something securely. But it has not entirely disappeared, as when we resolve a problem, find a resolution for a difficulty, for we are certainly not locking anything into place, we are reducing it, melting it into something less or dissolving it entirely away. "They had a disagreement but resolved it, and now it's all gone." Meantime, the sense of firm determination continues with our resolve-words, as in those still nagging New Year's Resolutions, to say nothing of parliamentary ones, or of men of firm resolve. All this leading to such an oddity as: "I was resolved to resolve the disagreement." Just as one might say, "Othello's love makes him want to cleave to Desdemona, but his rage makes him want to cleave her in twain." (Yes, I know, he murdered her in another way. Don't write.)

Apart from deciding that this great discovery of the antithetical nature of *resolve* and *resolution* should henceforth be known as the Criticus Clash, I was also forced to reconsider that which triggered all these philological ambulations through the OED — my New Year's Resolutions. Perhaps the Janus-like character of the word *resolution* itself is the reason that New Year's Resolutions so firmly undertaken so quickly melt away. In that case, so much the better. I no longer had to worry about breaking any of mine, so I threw them all out. All save one. It was among those unspecified resolutions regarding personal conduct that I alluded to earlier. Here it comes.

THIS PAST October a buoyant Criticus, having accomplished some fruitful literary research in the City of Dreaming Spires, repaired to London where he treated himself to several visits to the theatre. The best of these was the evening at the Lyric Theatre on opening night of the new Alan Ayckbourn play *Comic Potential.* Set in the not too distant future, it is a play about an an-

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droid who becomes human. This android is one of a number of such creations who are here called "actoids" because they have been designed solely to perform in television soap operas, a nice little dig at the nature of the genre and the performers in it. The actoids are supervised and manipulated by actual humans. The leading female actoid is played by an actress named Janie Dee in a brilliant performance that rightly gained rave reviews in all the papers the next day. Much of the charm was seeing her, starting as an automaton who could be made to stand still in any awkward position, little by little come to vivid and exuberant human life, finally moving with fluid energy and filled with human emotion for her human hero. Bravos all round.

IT WAS the sort of play that, were it a musical, critics would characterize as one that sends you out of the theatre humming its tunes. In such a mood did Criticus emerge onto Shaftesbury Avenue and make his jaunty way to a humming Piccadilly Circus and to the bus stop on Piccadilly itself just west of the Circus. A light drizzle had fallen earlier so the street was just barely wet. Though not yet late, only a single other person, a gentlewoman *d'un certain age,* was waiting at the stop as Criticus came along. Suddenly I saw that my Number 9 bus had just pulled away from the stop and was pausing as the driver waited for the moment to pull into Piccadilly Circus itself. A young man ran to it, leapt onto the back platform and moved into the bus. The open platform at the back of the double-decker was empty, so Criticus, android mimicking human, made a dash for it, intending to grasp the pole that passengers use to support themselves as they board and thereby to secure his ascent. Just as I was completing my run, though still in motion, and had half-seized the pole, the bus lurched into the Circus with surprising speed, my hand lost its grip, and I fell almost full-face down onto the street, slightly breaking the fall with my right shoulder which crashed onto the wet surface with fearsome force. By good fortune, it was the very last few feet of the bus lane, so the cars whizzing by on my right (remember, we're driving on the left here) were just beginning to move into the lane where I lay flattened and immobile like an android returned to its previous state.

Somehow I was able to rise up and make my way back to the bus stop. The only observer of all this folly, the aforesaid gentlewoman, looked at me and said, "Are you all right?" "Yes," I said. She paused just a bit, then said, "That was very foolish." Keeping my upper lip very stiff, I replied, "Yes, it was." A supremely English moment. We had no more converse. Another bus eventually came along, as buses will, and I boarded it with great care and, I hope, some dignity. Over the next week I watched my shoulder turn yellow, then brown, then purple, and in the fullness of time regain its normal color, though it ached for weeks afterwards.

When New Year's came around I made a resolution not to run after buses. It is the only one I am resolved to keep. CPR

Correspondence

(Continued from page 7)

should exhort his listeners in all their difficulties and dangers to trust in God, not in the artifice of lying; for those who have recourse to subterfuge, plainly show that they trust more to their own prudence than to the providence of God." So, for thousands of years, from "throughout the ancient Covenant" to our day, Jewish and Christian authorities have taught that all lying is wrong. Writers can be produced who disagree with this judgment, but Mr. Hines' implication that I am creating a novel absolutism about honesty is plainly false.

4) In his paragraphs four and five, Mr. Hines comes more or less unglued. The definition of a lie, as is simply and widely understood, is, as John Hardon puts it: "speaking [or writing] directly contrary to what is on a person's mind." I clearly labeled as a "summary" ... "at least as it reads to me" (which, in any case, it plainly was, with or without the labeling) my version of the Kurzweil/Horowitz dispute. To accuse me of "lying" in this is merely daft. He then calls St. Lawrence a liar because the Saint refused to adopt Valerian's narrow-minded, materialist definition of "treasure" as his own, equating that with Bill Clinton's pretended confusion about the word "is." But of course St. Lawrence said nothing contrary to what was in his own mind regarding the Church's treasure, he merely waited three days before revealing it to the Emporer in as vivid a way as he could. I believe Clinton spoke directly contrary to what he knew. If he did not, he may be daft also, but he did not lie.

As his own sloppy accusations show, Mr. Hines' overall implication that both the definition and morality of lying can and should be stretched to suit our convenience is a recipe for open-ended moral incoherence. As I wrote responding to Mr. Horowitz: "the Western tradition ... answers such questions as whether lying is moral not with reference to personal judgment but by consulting authority. God commands us: do not lie, and provides no authority for suspending that commandment. If we suspend it anyway, even if we believe we have excellent reasons for doing so, we will find, when we go looking for it again, that the authority and the coherence it gave our moral position is gone." That's what happened to George Bush; it is why he lost, and it is why Republicans commit political suicide if they countenance lying. CPR

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